

CASE NO. \_\_\_\_\_

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**IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT**

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<b>KELLY A. MASTERTON,</b>	)	
<b>GUARDIAN OF THE ESTATE OF</b>	)	
<b>M.F. MASTERTON,</b>	)	
	)	
<b>Plaintiff-Respondent,</b>	)	<b>Appeal from the Circuit Court of Cook</b>
	)	<b>County, County Department, Chancery</b>
	)	<b>Division</b>
<b>v.</b>	)	
	)	<b>Case No.: 2018-CH—03503</b>
<b>VILLAGE OF GLENVIEW</b>	)	
<b>POLICE PENSION BOARD, and</b>	)	<b>Honorable Judge David B. Atkins</b>
<b>VILLAGE OF GLENVIEW</b>	)	<b>Judge Presiding</b>
	)	
<b>Defendant-Petitioners.</b>	)	
	)	

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**SUPPORTING RECORD**

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Attorneys for the Defendant-Petitioner,  
Village of Glenview

CASE NO. \_\_\_\_\_

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<b>VILLAGE OF GLENVIEW POLICE PENSION BOARD, and VILLAGE OF GLENVIEW</b>	)	<b>Case No.: 2018-CH—03503</b>
	)	
	)	<b>Honorable Judge David B. Atkins</b>
	)	<b>Judge Presiding</b>
<b>Defendant-Petitioners.</b>	)	

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KELLY A. MASTERTON,	)	
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POLICE PENSION BOARD, and	)	Honorable Judge David B. Atkins
VILLAGE OF GLENVIEW	)	Judge Presiding
	)	
Defendant-Petitioners.	)	

AFFIDAVIT

I, Paul Denham, having been first duly sworn under oath, state as follows:

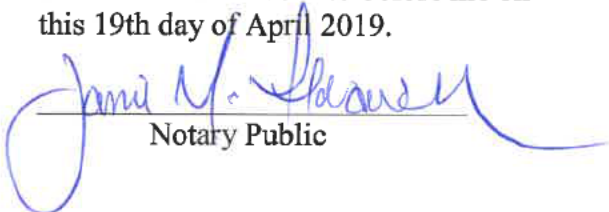
1. Under Supreme Court Rule 328, I confirm that the attached Supporting Record contains enough of the trial court record in order to show an appealable order or judgment, and that the copied documents included therein are authentic.

FURTHER AFFIANT SAYETH NOT

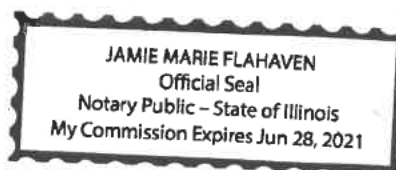


Paul Denham

Subscribed and sworn to before me on  
this 19th day of April 2019.



Notary Public





FILED  
9/21/2018 1:51 PM  
DOROTHY BROWN  
CIRCUIT CLERK  
COOK COUNTY, IL  
2018CH03503

BEFORE THE BOARD OF TRUSTEES OF THE  
GLENVIEW POLICE PENSION FUND

IN THE MATTER OF THE SURVIVING  
CHILDREN'S BENEFITS OF:

OFFICER MASTERTON,

Applicant,

AND

VILLAGE OF GLENVIEW,

Intervenor.

REPORT OF PROCEEDINGS had at the  
hearing of the above-entitled cause, before the  
BOARD OF TRUSTEES OF THE GLENVIEW POLICE PENSION  
FUND, held on the 30th day of August, 2017, at the  
hour of 8:30 a.m., at 2500 East Lake Street,  
Glenview, Illinois, before MICHELLE N. MARVIN,  
C.S.R., Notary Public.

BOARD MEMBERS PRESENT:

MR. KEVIN CHRISTELL, President;

MR. JAMES FOLEY, Secretary;

MR. GEORGE COLIS, Trustee;

MR. ROBERT FRANCOIS, Trustee;

MR. MICHAEL UNTIEDT, Trustee.

ORIGINAL

**COUNSEL PRESENT:**

THE LAW FIRM OF REIMER, DOBROVOLNY & KARLSON,  
by  
MR. RICHARD J. REIMER  
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Police Pension Board;

THE LAW OFFICE OF DAVID M. STEPANICH, by  
MR. DAVID M. STEPANICH  
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on behalf of the Applicant;

THE LAW FIRM OF CLARK, BAIRD, SMITH, LLP, by  
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Rosemont, Illinois 60018  
(847) 378-7700  
denham@cbslawyers.com  
on behalf of the Intervenor, Village of  
Glenview.

**I - N - D - E - X****EXHIBITS RECEIVED INTO EVIDENCE**

Board Exhibits A-G 8

1 MR. REIMER: My suggestion is do a roll  
2 call to establish a quorum and turn it over to me.

3 MR. FOLEY: Meeting is called to order.  
4 Christell?

5 MR. CHRISTELL: Here.

6 MR. FOLEY: Colis?

7 MR. COLIS: Here.

8 MR. FOLEY: Francois?

9 MR. FRANCOIS: Here.

10 MR. FOLEY: Untiedt?

11 MR. UNTIEDT: Here.

12 MR. FOLEY: Foley is here.

13 MR. REIMER: Thank you. The record  
14 should reflect that this is a hearing being  
15 conducted pursuant to Article 3 of the Illinois  
16 Pension Code. The purpose of this hearing is to  
17 address issues regarding the surviving spouse  
18 benefit claim of the dependent child of deceased  
19 Officer Owen Masterton. We're going to refer to  
20 that person as the "Applicant" in this case.

21 The purpose of this hearing will be  
22 to resolve, first of all, the Village of  
23 Glenview's motion to intervene. Secondly, to  
24 resolve the Village of Glenview's motion to

1 dismiss based on the 35-day jurisdictional rule.  
2 And, third, we've asked the parties to address the  
3 construction of the line of death surviving spouse  
4 benefit.

5 So, first, I'd ask the parties to  
6 identify themselves.

7 MR. DENHAM: Sure. Paul Denham, Village  
8 of Glenview.

9 MR. REIMER: Thank you, Mr. Denham.

10 MR. STEPANICH: David Stepanich,  
11 S-T-E-P-A-N-I-C-H, on behalf of the Applicant.

12 MR. REIMER: Thank you, Mr. Stepanich.

13 MR. STEPANICH: And the Applicant is  
14 Kelly Masterton, and she's sitting to my right.

15 MR. REIMER: Thank you. The first thing  
16 I'd like to do is I have what I distributed in  
17 front of you, gentlemen, a copy of what I've  
18 marked as Index to August 30th, '17 Board Exhibit  
19 Number A through G. So please take a look at  
20 that.

21 And now I've also provided each of  
22 the five trustees with a copy of that. They have  
23 not all been distributed or reviewed by the Board  
24 until this morning. I want to make sure if

1 anybody has any objection to any of this -- these  
2 marked exhibits. So I'd ask you gentlemen to take  
3 a moment, take a look and see whether or not you  
4 have any objections.

5 Are there any objections, first of  
6 all, let's ask by the Village, to Board Exhibit A  
7 through G?

8 MR. DENHAM: I don't have any objections.  
9 I do know that there's an issue, though, in terms  
10 of -- in reply to the response brief, which is  
11 Exhibit F, I know that the estate has argued that  
12 that shouldn't be submitted and it's not part of  
13 the packet. So I think I'd like to address that  
14 issue first before, and reserve the right to  
15 object with respect to Exhibit F.

16 MR. REIMER: Exhibit F which is captioned  
17 Response to the Village of Glenview's Memorandum.

18 MR. DENHAM: Yes.

19 MR. REIMER: Okay. So -- all right. So  
20 how about --

21 MR. STEPANICH: I understood him to -- I  
22 think he's referring to the reply, right? He --

23 MR. REIMER: If it's the most recent  
24 document, the one that was sent out dated August

1 18th, 2017, I'm not addressing that one yet. Nor  
2 am I addressing the document that Mr. Denham  
3 submitted yesterday.

4 So all I'm dealing with is what  
5 we've marked and what you've got in front of you,  
6 which is A through G.

7 My understanding was that F was  
8 submitted by Mr. Stepanich in response to the  
9 Village's Petition to Intervene; is that correct?

10 MR. STEPANICH: That was my  
11 understanding, and it's -- it's not what's labeled  
12 as Exhibit F here in the package you gave us, an  
13 e-mail. So it's -- it's not that document.

14 MR. REIMER: Okay. So what I just handed  
15 you right here with the index, that's all I'm  
16 concerned with. I realize that there are some  
17 other exhibits.

18 For example, in Exhibit A, which is  
19 counsel for the estate's application for dependent  
20 child's survivor benefits, there was exhibits. I  
21 did not include those by design, because that goes  
22 to the merits of the claim, so ...

23 MR. DENHAM: I understand. Just to --  
24 just to clear the air, Exhibit E is the letter

1 from Mr. Stepanich --

2 MR. REIMER: Right.

3 MR. DENHAM: -- which states for the  
4 record that they're not going to oppose the motion  
5 to intervene.

6 MR. REIMER: Correct.

7 MR. DENHAM: Board Exhibit F is an --  
8 essentially a response memorandum to what can be  
9 characterized as a motion to dismiss under these  
10 jurisdictional issues that we're probably going to  
11 discuss later.

12 Yesterday the Village submitted a  
13 reply memorandum in response to this. From the  
14 Village's standpoint, any brief that was produced  
15 by either party in advance of this hearing should  
16 be submitted for the record.

17 I don't have an objection to  
18 submitting Board Exhibit F. However, to the  
19 extent that there's going to be consideration of  
20 some sort of motion to strike the Village's reply  
21 brief, I would like that opportunity to discuss  
22 that before we discuss admitting all these  
23 exhibits, A through G.

24 MR. REIMER: Okay. Counsel, I'd like to

1 hear, do you have any objections to admission of  
2 Board A through G at this time?

3 MR. STEPANICH: I don't.

4 MR. REIMER: Okay. At the July 20th  
5 Pension Board meeting -- I'm sorry -- April 20th,  
6 2017 pension board meeting, the Pension Board  
7 entertained a motion authorizing me and my firm to  
8 act as hearing officer for purposes of these  
9 hearings.

10 So as the hearing officer, I'm  
11 going to admit, over counsel for the Village's  
12 objection, Board Exhibit Numbers A through G. So  
13 those documents are admitted into evidence without  
14 any further authentication or foundation. They're  
15 really more like pleadings than they are exhibits,  
16 but we're going to refer to them as Board Exhibits  
17 A through G, subject to counsel's objections to F.  
18 So those documents are in.

19 So before we get into argument on  
20 the various issues, let me ask you, to try to  
21 clarify here what is not included in the exhibit  
22 packet that we just discussed, is: There was  
23 apparently a letter sent by Mr. Stepanich dated  
24 August 18th, 2017, sent to me. I have not



1 received that. Along with that is a document that  
2 is Response to Village of Glenview's Memorandum,  
3 which was also apparently sent directly to the  
4 individual members of the Pension Board. It was  
5 not distributed, as it should not be.

6 It looks like Miss Heintzelman, who  
7 is also counsel for the Village, was copied with  
8 it.

9 What's the difference, Mr.  
10 Stepanich, between the attachment with the August  
11 18th, 2017 correspondence and F? Is there -- is  
12 it the same?

13 MR. STEPANICH: It is the same.

14 MR. REIMER: It's the same.

15 MR. STEPANICH: That's --

16 MR. REIMER: So we're not going to --  
17 that does not need to be admitted. That's already  
18 in the record.

19 MR. STEPANICH: They were courtesy  
20 copies.

21 MR. REIMER: All right, understood.  
22 Okay. So now let's address the other document  
23 that was received yesterday by e-mail to my  
24 office. I believe, Mr. Denham, you copied Mr.

1 Stepanich.

2 MR. DENHAM: Yes.

3 MR. REIMER: I was out of the office when  
4 this came in. So this is your -- this is your  
5 reply on jurisdiction; correct?

6 MR. DENHAM: Yes. It's just a reply to  
7 what is Board Exhibit F.

8 MR. REIMER: I don't believe the Board  
9 gave the Village leave to file this brief, so  
10 that's not going to be admitted, but we're going  
11 to let you argue.

12 MR. DENHAM: Did the Board allow leave to  
13 submit a response brief?

14 MR. REIMER: They did. In the  
15 correspondence that I sent to both of you, Board  
16 Exhibit Number D, we set a briefing schedule. We  
17 accepted your -- actually, we accepted the  
18 Village's initial brief. We accepted your  
19 supplemental brief, and we allowed the -- we'll  
20 call it the Applicant, to submit his brief, which  
21 is what we got.

22 MR. DENHAM: On the motion -- the motion  
23 to intervene, and he didn't do it in a timely  
24 basis, according to the briefing schedule, did he?

1 MR. REIMER: It's allowed. You're going  
2 to argue it, so that's my ruling. You've made a  
3 record. Let's move on.

4 Okay. So I think the first motion  
5 is -- let's clarify. The first issue that the  
6 Board needs to entertain or decide is the  
7 Village's motion to intervene. Now, I think I  
8 agree with Mr. -- I agree with Mr. Stepanich, I  
9 think -- or Mr. Denham, rather.

10 I think, initially, the Village or  
11 the Applicant said there was no objection. Is  
12 that accurate?

13 MR. STEPANICH: That's accurate. I -- I  
14 -- reviewing the case law, I think that if they're  
15 not part of the proceeding and it goes to further  
16 judicial review, they could be deemed to have  
17 waived any arguments by not participating in the  
18 Pension Board hearing. So ...

19 MR. REIMER: Okay. So the case law, I  
20 think, is clear. The Board has discretion. The  
21 more recent case law seems to say that there would  
22 be a PSEBA claim.

23 So, counsel, let me ask you, on  
24 behalf of the Applicant, if the Board awards your

1 client line-of-duty surviving spouse death  
2 benefits, would there be a claim for PSEBA under  
3 the Public Safety Employee Benefits Act? In other  
4 words, insurance, lifetime insurance?

5 MR. STEPANICH: I'd have to discuss that  
6 with her, but --

7 MR. REIMER: Would there be a  
8 possibility?

9 MR. STEPANICH: There's a possibility.

10 MR. REIMER: I think the most recent case  
11 would say that if there's a potential, then the  
12 Village's rights could be prejudiced, and I think  
13 the Board doesn't have the discretion to let the  
14 -- to prohibit the Village from coming in.

15 So I don't know if there's anything  
16 you want to add, other than: What -- if the  
17 Village is allowed in -- the Board, obviously,  
18 will vote on this. If the Village is allowed in,  
19 what role do you see the Village playing in this  
20 hearing? What is it you're going to bring to the  
21 table?

22 MR. DENHAM: Well, in addition to  
23 protecting its potential issues related to PSEBA,  
24 the Board -- or the Village's intent is to

1 supplement the Board's role as a factfinder.  
2 Specifically similar to what we're talking about  
3 today, ensuring that the claim is valid. To the  
4 extent that this claim goes forward after today,  
5 the Board will -- the Village will also take a  
6 look at the evidence and ensure that its rights as  
7 the funder to the Pension Board will be protected  
8 as well.

9 MR. REIMER: Is the Village claiming that  
10 the Board is a fiduciary?

11 MR. DENHAM: It is.

12 MR. REIMER: You might want to check the  
13 case law on that. Evanston versus Evanston Police  
14 Pension Board. The Pension Board -- the employer  
15 is not a fiduciary, and I know you have cited  
16 party in interest. Party in interest is a  
17 definitional section.

18 MR. DENHAM: Your question was whether  
19 the Board is a fiduciary.

20 MR. REIMER: The Village board.

21 MR. DENHAM: Your question, I think,  
22 though, was whether the Board is a fiduciary.

23 MR. REIMER: The City, a fiduciary.

24 MR. DENHAM: We -- we believe it's a

1 party of interest, not necessarily a fiduciary.

2 MR. REIMER: Okay, okay. Having said  
3 that then, what -- by way of an offer of proof,  
4 what witnesses might you call? If you're allowed  
5 in, what witnesses -- and this goes to a hearing  
6 on the merits, what witnesses might the Village  
7 call?

8 MR. DENHAM: You know, to the extent of  
9 fact witnesses related to the roll call incident  
10 where this unfortunate, tragic incident occurred,  
11 you know, obviously, it's very speculative at this  
12 point without any IMEs, without any sort of  
13 medical witnesses to really talk about what the  
14 Village has to offer from that standpoint.

15 MR. REIMER: So if the Village -- again,  
16 if the Village is allowed in -- I understand  
17 you're kind of at a disadvantage here -- would the  
18 Village be entertaining the possibility of  
19 retaining medical experts to render an opinion?

20 MR. DENHAM: I do not know, but I  
21 definitely -- to the extent that the Board wishes  
22 to put a timetable on it, that issue, which we can  
23 discuss with my client, we will.

24 MR. REIMER: Now, if the Village is

1 allowed in and this proceeds, and let's say the  
2 Board, the Pension Board, decides to retain expert  
3 witnesses to render an opinion, you'll get a copy  
4 of that as a party if you're admitted or allowed  
5 in, and you have an objection to that doctor's  
6 opinion or conclusion, who would pay for the  
7 evidence deposition of the doctor? Would that be  
8 the Village or would you expect the Board to pay  
9 this?

10 MR. DENHAM: I mean, at the end of the  
11 day, I think that the Village actually funds the  
12 Board, so ...

13 MR. REIMER: In part.

14 MR. DENHAM: In part, yes. So, you know,  
15 to the extent that I'm not prepared to argue that  
16 today, to the extent that you want to have that  
17 conversation down the road, I'd be more prepared  
18 to have it.

19 MR. REIMER: Well, I think -- I think  
20 that the Pension Board should -- would let the  
21 Board (sic) in, but the Board still has the  
22 discretion to determine what the role is.

23 In other words, what, if any,  
24 capacity are you going to be involved? So if the

1 Village is admitted in, we're going to need to  
2 know the answer to that. Do you have -- is there  
3 somebody you can talk to for us?

4 MR. DENHAM: Well, I'd like to talk to my  
5 client, obviously.

6 MR. REIMER: Okay.

7 MR. DENHAM: I mean, I reserve the right  
8 in terms of you wanting to limit whatever  
9 participation the Village has, you know, within  
10 our motion to intervene, which was unopposed,  
11 we've asked for full participation in the hearing,  
12 including the right to call additional witnesses,  
13 including the right to depose medical experts,  
14 that sort of thing.

15 You're asking me to speculate about  
16 an evidentiary record that has not been developed  
17 yet.

18 MR. REIMER: No. What I'm asking you is  
19 -- you just said you want full participation, so  
20 that's fine. If you're allowed in and you make an  
21 objection, a hearsay objection, to one of the  
22 doctors' reports, and it's one of the Pension  
23 Board doctors, who is going to pay for the cost of  
24 the evidence deposition? That's all I'm asking



1 you.

2 I don't know if that's speculative  
3 or not. That's something we're anticipating. So  
4 all we want to know, which is common in these  
5 proceedings, is who is going to pay for that  
6 deposition?

7 MR. DENHAM: I haven't had a chance to  
8 talk to my client about this speculative scenario  
9 even unfolding yet, so I don't know.

10 MR. REIMER: You said you wanted to take  
11 depositions, so I think the Board is going to want  
12 an answer. Who is going to pay for that?

13 The Board is going to want to know  
14 if there's -- if there's going to be -- if it goes  
15 to the point where there's medical testimony, and  
16 you're getting a copy of Pension Board physicians,  
17 expert witnesses' opinions and conclusions, you  
18 make a hearsay objection, we just want to know who  
19 is going to pay for that. So we need to know the  
20 answer for that.

21 MR. DENHAM: Right this second?

22 MR. REIMER: If you can tell us.

23 MR. DENHAM: I cannot tell you. I would  
24 need to talk to my client about that.

1 MR. REIMER: Mr. Stepanich, do you have  
2 -- I understand you have no objection to the  
3 Village's participation. What's your position on  
4 the nature and extent of the Village's  
5 participation?

6 MR. STEPANICH: I'm perceiving them as an  
7 adverse party and would be objecting to our claim  
8 and presenting -- essentially being opposing  
9 counsel throughout the proceedings.

10 So I'm -- I'm anticipating their  
11 full participation, and I'm not really expecting  
12 them not to be calling witnesses and  
13 cross-examining our witnesses and filing  
14 additional pleadings. That's what I'm expecting  
15 them to do. So ...

16 MR. REIMER: So you have -- make sure I  
17 understand. You would have no objection to the  
18 Village cross-examining any of your witnesses?

19 Do you have any objection to the  
20 Village calling their own witnesses? And as far  
21 as pleadings, the Board is not going to accept any  
22 pleadings unless they ask for it.

23 MR. STEPANICH: Right, okay.

24 MR. REIMER: So --

1 MR. STEPANICH: I would expect them to do  
2 so, and I would expect that would be normal for  
3 them -- you know, expected for them to file  
4 pleadings, to have the right to cross-examine  
5 witnesses, to call their own witnesses.

6 MR. REIMER: Okay. So I think -- why  
7 don't we do this: I've asked questions. You're  
8 the Movant, so let's -- I'm going to give you an  
9 opportunity if you want to summarize to the Board  
10 why you think you should be allowed to intervene,  
11 although I think it's kind of a foregone  
12 conclusion you will be allowed. If you want to  
13 just address, add -- if you want to, add anything  
14 to your participation.

15 MR. DENHAM: Sure. I'll just --

16 MR. REIMER: And then I will give you an  
17 opportunity to respond.

18 MR. DENHAM: I'll briefly summarize it.  
19 I apologize. I didn't think this was going to be  
20 opposed today, so I'm not necessarily prepared.

21 But to my recollection of the brief  
22 we filed in terms of the motion for intervention a  
23 while back, you know, essentially the Village has  
24 brought forth several valid, what's called

1 interests, which different Appellate Courts have  
2 said should have the Board exercise its discretion  
3 to allow the Village to intervene.

4 Essentially, the Board does have  
5 the discretion to allow the Village to intervene  
6 or not intervene in this particular situation.

7 But to summarize those interests  
8 that we talked about, potentially there might be a  
9 claim for what's called PSEBA benefits under the  
10 Public Safety Employee Benefits Act.

11 There's a recent Appellate Court  
12 case involving the Village of Alsip and an  
13 individual named Portincaso in which the Appellate  
14 Court has basically said it's an abuse of  
15 discretion for a board not to allow a municipality  
16 to participate when there is outstanding PSEBA  
17 benefits lingering.

18 In addition, there's another  
19 Appellate Court case called Williams, which  
20 essentially in that case, the Appellate Court said  
21 it is a valid interest in terms of having the  
22 Board being the funding mechanism for -- I'm  
23 sorry, the Village being the funding mechanism nor  
24 the Board in consideration of additional

1 fact-finding sorts of things that a municipality  
2 can bring to the table.

3 So in that case, as well as the  
4 Alsip versus Portincaso case, I think that the  
5 Village here has established those same sorts of  
6 interests with respect to the Village funding the  
7 Board, with respect to additional factfinding  
8 duties that the Village can perform to help your  
9 role as a factfinder in this situation, as well as  
10 the potential -- the potential risk of PSEBA  
11 benefits, which I'm not going to get into those  
12 issues. But, essentially, this proceeding could  
13 affect those sorts of issues for the Village down  
14 the road.

15 MR. REIMER: Can I ask, besides the death  
16 claim pending in front of the Court of Claims, is  
17 there a death -- a worker's compensation claim  
18 beyond that; do you know?

19 MR. DENHAM: I do not believe a worker's  
20 compensation claim was filed.

21 MR. STEPANICH: No, and we did receive an  
22 adverse ruling from the Court of Claims. For some  
23 reason they ruled that in late May, but we didn't  
24 get the actual decision until a few weeks ago.

1 They sent it to us.

2 MR. REIMER: Is that a final decision or  
3 will there be any appeal for that?

4 MR. STEPANICH: I'm not -- I have about  
5 10 days or so to make that decision still.

6 MR. REIMER: Okay. So we don't know that  
7 it's yet final?

8 MR. STEPANICH: We don't know that it's  
9 yet final.

10 MR. REIMER: All right. And then,  
11 counsel, I will give you an opportunity to respond  
12 briefly, if you'd like, to the motion to intervene  
13 argument.

14 MR. STEPANICH: I haven't contested their  
15 motion to intervene. I think the case law is  
16 pretty clear that if they aren't allowed to  
17 participate in the hearing, that they run the risk  
18 of waiving arguments later on if it goes into the  
19 Circuit Court. So I'm not contesting it.

20 MR. REIMER: Fair enough. All right. So  
21 the Board has heard arguments on the first issue,  
22 which is the motion to intervene.

23 Does the Board wish to discuss this  
24 publicly, to entertain motions in public session?

1 Does the Board wish to adjourn into executive or  
2 closed session under Section 2(c)4 of the Open  
3 Meetings Act, which allows you to adjourn into  
4 executive or closed session to deliberate after an  
5 evidentiary hearing? Which I think you can do in  
6 this case.

7 If you do so, you are required by  
8 law to have an audio or video verbatim transcript  
9 of your executive session deliberations, and you  
10 can't take any final action. So the only thing  
11 you can discuss is the motion to intervene.

12 As you know, it's really unopposed.  
13 I think the only -- the only thing you really have  
14 to decide is: Are you going to allow the Village  
15 to fully participate and, if so, are you going to  
16 put any parameters on their participation?

17 It's up to you. There's no right  
18 or wrong answer. I can give you my recommendation  
19 now, if you want.

20 MR. CHRISTELL: I don't think we need  
21 executive session, do we?

22 MR. FOLEY: No.

23 MR. CHRISTELL: So the issues are: Do we  
24 allow them in? I think that's clear.

1 MR. UNTIEDT: Agreed.

2 MR. CHRISTELL: The second issue is the  
3 one you raised a few times is the expense.

4 MR. REIMER: Right.

5 MR. CHRISTELL: And we can allow them --  
6 we can allow them to call witnesses, do whatever  
7 they feel is important as long as they expend it,  
8 as long as they cover their expenses.

9 MR. REIMER: The biggest thing I'm always  
10 concerned with is -- and this is fairly common, if  
11 you allow the municipality in, you allow them full  
12 participation, I think that's fair.

13 The question is: If you have -- if  
14 it gets to the point where you have to take  
15 evidence depositions of doctors, that gets  
16 expensive.

17 So they're your doctors. If  
18 there's an objection by the City, and typically my  
19 clients are opposed to the requirement that if  
20 there's an objection by the Village or the  
21 Intervenor, that they pay the cost of the evidence  
22 deposition. You always pay the cost of the court  
23 reporter. That's your job as the administrative  
24 agency.



1 My recommendation to you would be  
2 the Board should entertain a motion to allow the  
3 Village of Glenview to intervene with full  
4 participation rights. They're a party, subject  
5 only to the requirement that in the event that  
6 there's an objection to a pension board doctor's  
7 opinion based on hearsay, that the Village would  
8 pay the cost of the evidence deposition of the  
9 pension board's doctor or expert witness.

10 MR. FOLEY: So would that entail them  
11 getting another doctor's opinion or is that just  
12 cross-examining our doctor?

13 MR. REIMER: That's cross-examining your  
14 doctor. They would -- in the event the Village  
15 wants to bring in an expert, hire their own, which  
16 they could if you grant this motion, they would be  
17 responsible to either bring that doctor in front  
18 of you, or if we need to take the doctor's  
19 evidence deposition, they would be responsible for  
20 that. We would always be responsible for the  
21 court reporter, because you are the administrative  
22 agency. You have to do that.

23 MR. FOLEY: Yeah, yeah.

24 MR. REIMER: So that's my motion.

1 MR. CHRISTELL: Yes.

2 MR. REIMER: You can second it, or does  
3 everybody understand it?

4 MR. FOLEY: I'll second it.

5 MR. REIMER: There's a second.

6 MR. FOLEY: There's a motion and second  
7 by Kevin Christell. All in favor?

8 (WHEREUPON, all Board Members  
9 responded aye.)

10 MR. REIMER: Do a roll call vote on that.

11 MR. FOLEY: Christell?

12 MR. CHRISTELL: Yes.

13 MR. FOLEY: Colis?

14 MR. COLIS: Yes.

15 MR. FOLEY: Francois?

16 MR. FRANCOIS: Yes.

17 MR. FOLEY: Untiedt?

18 MR. UNTIEDT: Yes.

19 MR. FOLEY: Foley is a yes.

20 MR. REIMER: Okay. So that motion --  
21 you're in, all that.

22 Okay. So the next -- I think the  
23 next -- sequentially, the next motion is really  
24 the Village's motion, and that is the Village's

1 motion to -- I'm going to call it a dismiss --  
2 motion to dismiss, and that's based on the 35-day  
3 rule. To summarize, is that -- that's one of the  
4 positions, that there's a decision made, correct?

5 MR. DENHAM: Yeah. You know, according  
6 to your letter, I didn't realize that that was  
7 going to come up today; but, yeah, I'd be willing  
8 to discuss that as well.

9 Thank you for the opportunity to  
10 have the Village intervene and for me to discuss  
11 this with you.

12 When the Village was looking into  
13 the potential of intervening, it issued a FOIA  
14 request to the Board. It received back a series  
15 of materials which, obviously the Village wasn't a  
16 participant in, back in early 2015 when the  
17 initial decision for an annuity was made by the  
18 Board.

19 In reviewing those FOIA documents,  
20 the Village supplemented its motion to intervene,  
21 which now I agree to be characterized as a motion  
22 to dismiss.

23 Essentially there are two  
24 jurisdictional reasons in which the Village

1 doesn't think that this particular proceeding  
2 should move forward. Essentially, what the  
3 Applicant is trying to do is convert a  
4 survivorship pension under Section 3-112(c) of the  
5 Pension Code and turn that into something that's  
6 covered under Subsection (e) of the Pension Code.

7 Now, I, in reviewing the Board's --

8 MR. REIMER: I'm sorry, counsel. Just,  
9 if you would, try to do this piecemeal. So bear  
10 with me. We're going to give you a full and fair  
11 opportunity to make all your arguments.

12 If you would, for this issue, just  
13 confine yourself, your arguments, if you would, to  
14 the 35-day rule.

15 MR. DENHAM: Sure.

16 MR. REIMER: I think, as I read it, your  
17 -- your first argument is: 35 days has gone by.  
18 There's been a final administrative decision, so  
19 the Board lacks jurisdiction.

20 MR. DENHAM: Yes. And I was right there.

21 MR. REIMER: Okay. I thought you were  
22 going to go into part two.

23 MR. DENHAM: No. So, essentially,  
24 Subsection (c), there was an award. There was an

1 annuity.

2 At the beginning of the Board  
3 records that I reviewed, it looked like there was  
4 some correspondence with an attorney. It looked  
5 like he represented the estate, but according to  
6 the most recent pleading, that might not  
7 necessarily have been the case.

8 But, essentially, he reached out to  
9 Mr. Reimer and asked, you know, essentially could  
10 the Board basically award these supplemental sorts  
11 of benefits under Subsection (c) while the estate  
12 had an opportunity to review the coroner's report.

13 And I can't really tell what  
14 actually happened during some of these meetings.  
15 There are some board minutes which reflect that  
16 supplemental benefits were made under Subsection  
17 (c).

18 However, you know, in terms of the  
19 Administrative Review Law, pension boards are only  
20 allowed to exercise the -- they're only allowed to  
21 do the things that the statute tells them to do.

22 And in this case, the statute tells  
23 you that, yes, you can conduct evidentiary  
24 hearings, you can call witnesses, and you can give

1 these types of awards.

2 Under Administrative Review Law,  
3 once an award is awarded, then there's 35 days  
4 from that, that point in time, to essentially --  
5 for any party to file a claim in Circuit Court to  
6 challenge that award.

7 So it's the Village's -- it's the  
8 Village's belief, based off the case law which is  
9 actually cited in its initial brief, that in terms  
10 of jurisdictional -- in terms of jurisdiction, the  
11 Board doesn't have the authority to go back and  
12 reconsider whether this pension should have been  
13 awarded under Subsection (e) as opposed to  
14 Subsection (c).

15 I think that basically summarizes  
16 it. If you have any additional questions, I'd be  
17 happy to answer them. Thank you.

18 MR. REIMER: Thank you, counsel. Mr.  
19 Stepanich?

20 MR. STEPANICH: As we point out in our  
21 brief, in our response to their motion, the Board  
22 has -- since the time of this unfortunate  
23 accident, has taken action without prejudice to a  
24 further discussion of line-of-duty benefits. It's

1 always been contemplated by this Board.

2 And it's -- and as I point out, I  
3 would just -- if I can -- on the minutes from  
4 April 13th of 2015, the minutes show that Michael  
5 received 50 percent, benefit processed at 50  
6 percent without prejudice pending attorney  
7 approval.

8 That term, as it's used in the  
9 correspondence between Sergeant Foley and Attorney  
10 Reimer, also says without prejudice to a  
11 subsequent line-of-duty claim.

12 Now, the Pension Code also provides  
13 that the Pension Board has to make rules for its  
14 own agenda for how it operates. And I think it's  
15 140 is the section of the Pension Code. So --

16 MR. REIMER: I think it says they may.

17 MR. STEPANICH: They may. Anyway, the  
18 Pension Board has to have the ability to put what  
19 it wants on its agenda and hear things in a timely  
20 fashion. The 35-day rule is a requirement to  
21 judicial hearing afterwards.

22 So it's kind of in opposite to this  
23 proceeding. We're still at the Pension Board  
24 level. You have always left the door open for

1 this subsequent proceeding. And for that reason,  
2 I think what the Village is respectfully -- with  
3 due respect, what they're trying to do is come in  
4 here and tell you how to run the Pension Board and  
5 how and what you should put on your agenda and  
6 what you should hear. And you have the right to  
7 do that under the Pension Code.

8 It was always the intention that  
9 Miss Masterton would be able to file a  
10 line-of-duty benefit if you felt it was  
11 appropriate.

12 At the time of Officer Masterton's  
13 death, he had recently been divorced from Miss  
14 Masterton. They have one child together. It was  
15 a fluid situation in terms of who was going to be  
16 the guardian of the estate; you know, what her  
17 status was. So she is the guardian of Michael  
18 Masterton, their son, for purposes of receiving  
19 the benefits.

20 A probate estate was established.  
21 But that wasn't something that was going to happen  
22 quickly, and I think it was always the intention  
23 of the Board that she would be given some time to  
24 decide whether she wanted to do that or not.



1 For that reason, I think their  
2 objection is misplaced and not supported by the  
3 Pension Board. I think you have the ability to  
4 hear this proceeding if we go to the merits.

5 MR. REIMER: Okay. Thank you. So a  
6 couple of questions. I think the case law on  
7 administrative review is pretty clear that in  
8 order to trigger the 35-day rule, the  
9 jurisdictional rule, there has to be a couple of  
10 things.

11 One is an evidentiary hearing on  
12 the merits, perhaps. But more importantly is  
13 there has to be a final written decision and order  
14 that is served upon all the parties affected.

15 And I don't know that that was done  
16 here. I certainly didn't do it. So in other  
17 words, as we've done in disability cases, this  
18 Board will recall we've had a disability  
19 applicant; after an evidentiary hearing, you grant  
20 or you deny the disability application. That's  
21 followed up by a written decision and order.

22 And once that written decision and  
23 order is placed in the mail or served upon the  
24 parties affected, the parties that want to

1 challenge that have 35 days within which to go to  
2 the Circuit Court and seek judicial review.

3 I don't know that that's ever  
4 happened. Again, I'm sure that I never did it. I  
5 also think my e-mail to Craig Mielke, M-I-E-L-K-E,  
6 who I believe at some point in time was counsel,  
7 perhaps prior to you, somehow he reached out to me  
8 and indicated he may be involved. So --

9 MR. STEPANICH: Yeah. I don't think he  
10 ever represented her, though, formally. So he was  
11 making, you know, understandably, kind of an  
12 inquiry, but he really wasn't speaking for her.

13 MR. REIMER: And I was not at your April  
14 13th, 2015 meeting, but the minutes would seem to  
15 reflect that the intention of the Board was to  
16 award the dependent child pension, the survivor  
17 benefit, which is 50 percent of Officer  
18 Masterton's salary, and that would have been under  
19 -- really, would have been under 3-112(a).  
20 Correct?

21 MR. FOLEY: Yes.

22 MR. REIMER: Is that the intent on an  
23 interim basis?

24 MR. FOLEY: Yes.

1 MR. REIMER: All right. So I don't know  
2 what you want to do. This is another one. This  
3 is the second issue you need to determine. Your  
4 options are the same as with the first issue.

5 You can discuss this publicly to  
6 grant or deny the Village's motion to dismiss  
7 based on -- I'm going to call it jurisdiction, but  
8 it's really the 35-day rule theory.

9 MR. DENHAM: Can I just have a chance to  
10 reply?

11 MR. REIMER: Go ahead. We'll give you a  
12 brief reply.

13 MR. DENHAM: I promise to be brief. In  
14 the materials there actually is a case that I've  
15 cited, that's Johnson versus Machetti,  
16 M-A-C-H-E-T-T-I, 228 Ill.App.3d 420 423. It's a  
17 1992 case.

18 In that case, the Appellate Court  
19 found that a letter that a 50 percent award had  
20 been granted was sufficient notice that the Board  
21 had taken a final administrative action for  
22 administrative review purposes.

23 If I understand Mr. Reimer's  
24 arguments on this point, is that the Board may

1 have had a final decision in this situation, and I  
2 don't think anyone can argue that there's not a  
3 final decision in this situation.

4 The estate has been receiving the  
5 -- the minor son has been receiving these benefits  
6 for almost -- for over two years now, I think.  
7 It's just that it never was codified into writing,  
8 but it doesn't necessarily have to be a written  
9 decision, and I don't think there's actually case  
10 law on that point that there has to be a written  
11 decision.

12 There is case law that says when  
13 there's no written decision, when there's nothing  
14 in writing at all. But surely there's something  
15 from the Board, there's something in the FOIA  
16 request, which I reviewed, which communicated to  
17 the estate that this award was being awarded. I  
18 don't think that that is a proper characterization  
19 of the law.

20 You know, the other thing I'll say  
21 is I don't think there are any rules or  
22 regulations which talk about the Board's  
23 discretion to award annuities without prejudice.  
24 That's not in the Pension Code.

1                   Essentially, the Pension Code  
2                   governs what a board may or may not do. In fact,  
3                   the provision of the Pension Code which talks  
4                   about rules and regulations says that you may  
5                   enact rules and regulations to the extent that  
6                   it's consistent with the rest of the Pension Code.

7                   I mean, obviously, you can't enact  
8                   a rule which says we're not going to give anyone  
9                   any money. You know, on a similar note, you can't  
10                  necessarily give awards without prejudice.

11                  And I appreciate the extra time.  
12                  Thank you.

13                  MR. REIMER: Okay. So your options then  
14                  are to discuss it publicly, or to adjourn into  
15                  executive or closed session, as you had the  
16                  ability or opportunity at the previous issue to be  
17                  decided. What is your pleasure? Again, there's  
18                  no right or wrong answer.

19                  MR. CHRISTELL: Do we want to ask counsel  
20                  if he has a response to that or --

21                  MR. REIMER: We can, but here's the  
22                  problem: Typically a court would say the Movant  
23                  goes first, the response, the person who is  
24                  responding to the motion would get an opportunity

1 to argue, and occasionally they will give you a  
2 reply. It's a slippery slope.

3 So to try to control this, I think  
4 you've heard everything you need to hear. That's  
5 not to cut you off, counsel. We have to control  
6 this at some point in time.

7 MR. FOLEY: I don't feel we need to go  
8 into executive session, unless somebody else wants  
9 to.

10 MR. COLIS: No.

11 MR. UNTIEDT: No.

12 MR. REIMER: Does the Board have any  
13 questions?

14 MR. FOLEY: So it was my understanding of  
15 the law that if you don't have a written decision  
16 and order, that somebody could come in and then  
17 file for a change.

18 MR. REIMER: Yeah. I believe that's the  
19 case law. There's a Second District case, but  
20 you're not in the Second District, that stands for  
21 the proposition that payment of benefits alone  
22 triggers the 35-day rule. And that's Roselle  
23 Police Pension Board, Sola (phonetic). But that  
24 is the Second District.

1 In the First District, you have a  
2 couple of cases that address that. One is --  
3 counsel mentioned Johnson.

4 More recent, a 1992 case, is you  
5 have Fields versus Schaumburg Police Pension  
6 Board. I don't have the citation, but it's my  
7 case. It's a reported decision. I, of course,  
8 lost that case, so I'm acutely familiar with it.  
9 And that pretty much said that there has to be a  
10 written decision and order following the hearing  
11 or a board meeting, things of that nature.

12 After that, you had a case called  
13 Howe, H-O-W-E, versus Chicago Fire Pension Fund,  
14 and it's Howe one, because there's two reported  
15 decisions. Howe pretty much follows that.

16 And there's a very recent case out  
17 of Chicago Ridge, Balderman and Kaplinski,  
18 B-A-L-D-E-R-A-N and Kaplinski, K-A-P-L-I-N-S-K-I.  
19 I don't have the citations. And that also stands  
20 for the proposition that until such time as  
21 there's a written decision and order signed off --  
22 that's approved at a board meeting, signed off by  
23 the parties and sent out to the parties affected,  
24 there is no triggering of the 35-day rule.

1           So I think your intention all along  
2       was -- as I understand it, was to award at least  
3       the minimum, the survivor benefit to a dependent  
4       child under Section 3-1129(a), and then -- and not  
5       prejudice the Applicant from having to wait days,  
6       months, weeks, years to decide whether or not that  
7       there was going to be a claim filed under  
8       Subsection (e), which we will get to if the motion  
9       to dismiss isn't granted.

10           So I -- my recommendation is to  
11       you, that you entertain a motion to deny the  
12       Village's motion to dismiss based on the 35-day  
13       jurisdictional rule. We'll call it that. That's  
14       my recommendation to you, but ...

15           MR. CHRISTELL: Do we just say --

16           MR. REIMER: Just say I make that motion.

17           MR. CHRISTELL: I make the motion that we  
18       deny the Village's request to enforce or to --

19           MR. FOLEY: Dismiss.

20           MR. CHRISTELL: -- to dismiss under the  
21       35-day rule.

22           MR. COLIS: I second.

23           MR. FOLEY: Christell?

24           MR. CHRISTELL: Yes.



1 MR. FOLEY: Colis?

2 MR. COLIS: Yes.

3 MR. FOLEY: Francois?

4 MR. FRANCOIS: Yes.

5 MR. FOLEY: Untiedt?

6 MR. UNTIEDT: Yes.

7 MR. FOLEY: Foley is a yes.

8 MR. REIMER: So that's denied. Now, I  
9 think -- do you want to go right into it?

10 I think the third issue that the  
11 Board has to decide, it's really a jurisdictional  
12 argument as well, and that is whether or not a  
13 dependent child is eligible for surviving spouse  
14 benefits, line-of-duty surviving spouse benefits  
15 under Section 3-112, subparagraph (e) of the  
16 Pension Code, which is really what this claim is.

17 MR. DENHAM: Yes.

18 MR. REIMER: So I will turn it over to  
19 you, the Village, to argue that issue.

20 MR. DENHAM: This is more of an issue of  
21 statutory construction, statutory interpretation.

22 I'm a visual person. I actually  
23 printed out a copy of the statute and highlighted  
24 it. I'd be more than happy, as a demonstrative

1 exhibit, to pass it out.

2 MR. REIMER: I'll tell you what I can do.  
3 Unless you have any objections, I did print for  
4 the Board -- I have not yet distributed it -- if  
5 you don't have any objections, counsel --

6 MR. STEPANICH: No objection.

7 MR. REIMER: This is right off of -- this  
8 is right off of Westlaw. So it's not -- I  
9 actually only have copies for the Board. This is  
10 not highlighted or annotated.

11 MR. STEPANICH: I've got it.

12 MR. REIMER: You probably have it. Do  
13 you have any objection?

14 MR. STEPANICH: No.

15 MR. DENHAM: I do not.

16 MR. REIMER: So I'm going to distribute  
17 it to you, gentlemen. This is an unredacted,  
18 unedited copy of the statute that they're talking  
19 about. And I think counsel will direct your  
20 attention, eventually during his argument, to the  
21 last section.

22 MR. DENHAM: Yeah, let's start there.  
23 Let's start with Subsection (e), because that's  
24 actually the easiest to see off the statute.

1 MR. REIMER: I'm sorry. Proceed.

2 MR. DENHAM: The first line says the  
3 pension of the surviving spouse of a police  
4 officer who dies on or after. Let's just stop  
5 there. All that's -- all that's stated there is  
6 surviving spouse.

7 As that paragraph continues, it  
8 talks about the specific requirements for that  
9 type of pension, which you'll probably consider  
10 more if this does continue and there's an  
11 evidentiary hearing. But all I'm talking about  
12 right now is that surviving spouse language.

13 Now, if you go up to paragraph A,  
14 the second sentence of that paragraph,  
15 subparagraph, it says, "Upon the death of the  
16 surviving spouse or upon the remarriage of a  
17 surviving spouse, if that remarriage terminates,  
18 the surviving spouse's eligibility under Section  
19 3-121, the police officer's unmarried children who  
20 are under age 18, or who are dependent because of  
21 physical or mental disabilities, shall be entitled  
22 to equal shares of such pension. If there's no  
23 eligible surviving spouse and no eligible child,  
24 the dependent parent or parents of the officer

1 shall be entitled to receive or share such pension  
2 until their death or marriage or remarriage after  
3 the death of the police officer."

4 So, again, go back to Subsection  
5 (e). It only says surviving spouse. Subsection  
6 (a) talks about, for a lack of a better term, line  
7 of succession. If there isn't a surviving spouse,  
8 then it goes on to certain types of dependent  
9 children. If there are no dependent children,  
10 then it goes on to different types of parents,  
11 surviving parents.

12 Subsection (a) has nothing to do  
13 with this. Subsection (a) involves individuals  
14 who pass away when they're either taking or  
15 entitled to a retirement pension. So they have 20  
16 years in and they're over 50 years old.

17 However, if you then look at  
18 Subsection (b) and Subsection (c), there are two  
19 other types of survivor pensions which  
20 specifically have this language.

21 If you look at the last line of  
22 Subsection (b), it says, "The pension earned by  
23 the police officer as of the date of death as  
24 provided in Subsection 3-111 shall be paid to the

1 survivors in the sequence provided in Subsection  
2 (a) of this section. And if you also look at  
3 Subsection (b), it has almost that identical  
4 language.

5 So essentially we know that the  
6 line of succession that's set forth in Subsection  
7 (a) is also set forth in Subsection (b) and (c).  
8 How do we know that? Because it specifically says  
9 it is.

10 And if you remember, the Applicant  
11 here, the benefits without prejudice that were  
12 initially awarded, were actually under this  
13 Subsection (c).

14 So how do I know that a dependent  
15 child is covered under Subsection (c)? Because it  
16 says so.

17 Again, surviving spouse is only  
18 listed in Subsection (e). There's no dependent  
19 children, there's no surviving parents written in  
20 that section.

21 In terms of statutory construction,  
22 typically lawyers try to adopt -- and courts try  
23 to adopt the plain meaning rule. Whatever the  
24 plain meaning of a statute is, is what the statute

1 means.

2 I think the statute is pretty clear  
3 here, but sometimes lawyers tend to argue that  
4 certain statutes are ambiguous. And in this case,  
5 I believe in fairness to my colleague, he's  
6 arguing essentially that Subsection (e) is  
7 ambiguous, and minor children should be included  
8 within Subsection (e).

9 But there are two canons of  
10 statutory construction which should apply here  
11 which dispose of that argument, unfortunately.

12 First, there's a maximum -- the  
13 inclusion of one thing is to the exclusion of  
14 another. So in a statute, if someone writes  
15 something like surviving spouse, that means they  
16 -- that people who are not surviving spouses are  
17 not included in that provision.

18 The second canon of statutory  
19 interpretation that applies here is essentially  
20 when legislature includes different words in  
21 different statutes, those words have different  
22 meanings.

23 So here the legislature clearly  
24 intended, under Subsection (e), to only limit it

1 to, and I quote, "the surviving spouse of a police  
2 officer."

3 With respect to the response brief  
4 that was submitted and admitted into the Board  
5 record, you know, there's an argument about how  
6 there's a void, or some sort of benefits are not  
7 being able to trickle down under Subsection (e).  
8 But I remind you there are benefits that have been  
9 awarded that the Village is not saying are  
10 inappropriate to any extent under Subsection (c),  
11 which will continue to be the Board's award in  
12 this matter until the minor child turns 18 years  
13 old.

14 And, again, if you have any  
15 questions, feel free to ask. Thank you.

16 MR. REIMER: Thank you, counsel. Mr.  
17 Stepanich.

18 MR. STEPANICH: Thank you. I agree that  
19 the section says what it does. It says the  
20 pension of a surviving spouse of a police officer  
21 who dies resulting from the -- of an injury  
22 incurred or resulting from the performance of an  
23 act of duty. So it does say the surviving spouse.

24 And, yes, what I've argued is what

1 happens if there is no surviving spouse. And this  
2 is clearly a line-of-duty death. And whether we  
3 get to the merits of what happened in this case,  
4 let's say we had a very clear example. Let's say  
5 someone was -- let's say the police officer was  
6 apprehending a suspect or something like that.  
7 There was a very dramatic manner in which everyone  
8 could agree it was a line-of-duty death, and that  
9 police officer just happened to not be married but  
10 had dependents.

11 Well, under his interpretation and  
12 under what the statute says, as written like this,  
13 those line-of-duty benefits would go to no one.  
14 There would be no place for them to go. That  
15 can't be what the legislature intended.

16 And what -- the case law is  
17 interpreted, and I've quoted a couple of cases in  
18 my brief, one of which is Hahn versus Police  
19 Pension in the City of Woodstock, and the court  
20 states: "The Illinois Pension Code governs all  
21 matters related to the Police Pension Fund, and it  
22 must be liberally construed in its provisions in  
23 favor of police officers and their surviving  
24 dependents."



1 Under his interpretation, there  
2 would be no place for the additional benefits,  
3 which the legislature intended to go to survivors  
4 of police officers who suffered a line-of-duty  
5 death; there would be no place for these benefits  
6 to go.

7 Another case, Stec versus the Oak  
8 Park Police Pension Board says it's the court's  
9 duty to enforce the Pension Code as enacted  
10 according to the plain and unmistakable provisions  
11 attaching the popular meaning to the words, unless  
12 the spirit and purpose of the Act dictate  
13 otherwise.

14 Okay. We've got a situation now.  
15 It also, I could --

16 MR. REIMER: I'm sorry. Is that Stec one  
17 or Stec two? The first Stec deals with the  
18 non-duty disability, and the Stec two deals with  
19 the eligibility of a survive spouse.

20 MR. STEPANICH: That would be --

21 MR. REIMER: The second one?

22 MR. STEPANICH: Yeah, it's Stec two.

23 MR. REIMER: Okay.

24 MR. STEPANICH: For that matter,

1 surviving spouse isn't defined in the statute.

2 So I could, I suppose, argue that  
3 since she was his spouse, that she's entitled to  
4 those benefits and she could be the Claimant, but  
5 I'm -- it's counterintuitive and illogical to say  
6 since they were divorced at the time that she's  
7 the surviving spouse. So I'm not going to make  
8 that argument.

9 But the point is: It's not  
10 defined, and it can't be the case, it seems to me,  
11 that the legislature would provide for enhanced  
12 pension benefits for a police officer who dies in  
13 the line-of-duty and for there to be no one to  
14 collect on them in the case of that police  
15 officer, who just happened to be -- didn't have a  
16 surviving spouse.

17 I don't think that's what the  
18 legislature intended. I don't think that's the  
19 interpretation that the courts have placed on. I  
20 think the interpretation should be back to  
21 Subsection (a), and that the method of which the  
22 survivorship benefits are distributed should be  
23 applied here, and that the dependent son would  
24 then be eligible for the line-of-duty benefits.

1 I think that's the real intent of  
2 the legislature and that should be the  
3 interpretation that the Board adopts.

4 MR. REIMER: Thank you, counsel. I'll  
5 give you -- Mr. Denham, we'll give you a brief  
6 reply, since you're the Movant, if you want one.

7 MR. DENHAM: You know, again, actually,  
8 you know, I think the Village agrees there is some  
9 case law there about a liberal interpretation of  
10 the Pension Code. However, that doesn't mean you  
11 can just make up things that aren't included in  
12 the Pension Code.

13 At some point, someone has argued  
14 that perhaps a divorced spouse should be a  
15 surviving spouse for the purpose of the Pension  
16 Code, and courts have rejected that argument.

17 There's no way that you can somehow  
18 pigeonhole a minor child into the definition of  
19 surviving spouse, which is actually in Subsection  
20 (e).

21 I just want to -- substantively,  
22 that concludes my argument. I just want to cite  
23 the cases. I did talk about these two types of  
24 statutory construction, which are in the reply

1       brief, which wasn't submitted today.

2                       For the purposes of statutory  
3       construction that when the legislature uses  
4       certain language in one part of a statute and  
5       different language in another part, the courts  
6       assume different meanings were intended.

7                       That's from a case Gutraj,  
8       G-U-T-R-A-J, versus the Board of Trustees of the  
9       Police Pension Fund of the Village of Grayslake,  
10      which is a 2013 Ill.App.2d 11 -- I'm sorry --  
11      121163 case.

12                      And then for the -- for the canon  
13      of statutory construction, that it is a  
14      fundamental principle of statutory construction  
15      that the express mention of one thing in a statute  
16      excludes all other things not mentioned. That's  
17      from Village versus Village of Barrington -- I'm  
18      sorry -- Mitchell versus Village of Barrington,  
19      2016 Ill.App 1st 153094.

20                      Thank you for allowing me to state  
21      that for the record.

22                      MR. REIMER: Thank you. If you allow me,  
23      Members of the Board, I would just ask some  
24      questions and, certainly, I'll allow you to ask

1 questions of counsel.

2 I take it there's no disagreement  
3 that there's no surviving spouse. Meaning, at the  
4 time of his death, Officer Masterton was not  
5 married. Is that -- we agree to that; correct?

6 MR. STEPANICH: We agree to that.

7 MR. REIMER: Is that correct?

8 MR. DENHAM: That's my understanding.

9 MR. REIMER: Okay. Do we also agree that  
10 the son was dependent within the meaning of the  
11 statute and eligible for benefits? I think I  
12 heard you say that. I just want to make sure that  
13 that's not an issue.

14 MR. DENHAM: According to the Board's  
15 determination at the time, there's no reason to  
16 dispute that.

17 MR. REIMER: Got it. Legislative  
18 history. I've looked at the legislative history  
19 of that section, but I will not profess to be the  
20 guru as far as research on legislative history. I  
21 had my staff, people a lot smarter than me, a lot  
22 better at technology, review it.

23 Have either one of you come up with  
24 any probative legislative history that would shed

1 any light on this subject?

2 MR. STEPANICH: I have not.

3 MR. DENHAM: I have not.

4 MR. STEPANICH: And I did look, and I  
5 don't see it discussed in the --

6 MR. REIMER: That was -- our reading was  
7 there was no help at all to give us --

8 MR. COLIS: What does that mean, Rick?

9 MR. REIMER: That means oftentimes if you  
10 don't have any case law -- and by the way, before  
11 I answer that question, I'm not aware of any  
12 reported case law that interprets this provision.

13 So lawyers all like to be able to  
14 advise their clients by saying well, here's how  
15 the courts have interpreted this statute. I don't  
16 believe it's out there.

17 I think that it's fair that if  
18 anybody had found it, we'd have been hearing about  
19 it; correct?

20 MR. STEPANICH: Right, and --

21 MR. REIMER: So there's no --

22 MR. STEPANICH: You can't really look at  
23 the case law in other states, because the pension  
24 codes are different, and it just -- it wouldn't be

1 an adequate comparison. Sometimes we'll then say,  
2 what are other states doing in like circumstances?  
3 It's just apples and oranges, really.

4 MR. REIMER: So oftentimes when you don't  
5 have court interpretations that will help us  
6 determine what the legislature meant, you can look  
7 to legislative history.

8 So what that means is: Was it  
9 debated in the House or the Senate on the floor  
10 when it was being -- when there was a motion to  
11 try to pass it?

12 There was a PSEBA case that was  
13 resolved a couple of years ago based on comments  
14 and questions that were asked during the debate on  
15 the floor. I haven't been able to find any that  
16 would tell you what the legislature meant.

17 I just wanted to give both parties  
18 an opportunity to weigh in on that, if they were  
19 able to come up with something. So I don't think  
20 anybody today can sit here and look you in the eye  
21 and say here's what the legislature intended.

22 So the second question, basically,  
23 I have then would be: As I understand your  
24 argument, had the legislature intended to include

1 surviving spouses -- I'm sorry -- dependent  
2 children in Subsection (e) of 3-112, they would  
3 have done so.

4 MR. DENHAM: Yes.

5 MR. REIMER: That's kind of your  
6 argument?

7 MR. DENHAM: And, you know, the other  
8 provisions in that Article, you know, there are  
9 limits to how far they go. I mean, it's not just  
10 all children. It's dependent children up to 18 or  
11 other children that have special needs, that sort  
12 of thing.

13 The legislature makes different  
14 determinations about these benefits and whether or  
15 not they should be extended to different  
16 individuals in the unfortunate circumstances of  
17 death.

18 And here, for whatever reason,  
19 Subsection (e), which is a -- a higher benefit,  
20 was only limited to surviving spouses.

21 MR. REIMER: Okay. So counsel for the  
22 Applicant then, question: I'm familiar generally  
23 with the provisions of -- from the Supreme Court  
24 down that talk about if there's an ambiguity in



1 the Pension Code, liberal construction in favor of  
2 the participants and beneficiaries. I think I  
3 agree with that. But my reading of that is is  
4 only if it's -- there's an ambiguity in the  
5 statute. Do you -- do you agree or no?

6 MR. STEPANICH: I think so. I don't -- I  
7 don't know how to characterize this. It's an  
8 omission, right? And it's -- it seems -- I mean,  
9 clearly, they could have just put the same  
10 language in the preceding sections, you know, and  
11 that this wouldn't be an issue. It would be  
12 clear.

13 But it would then -- then that  
14 would kind of -- what was the question? Why would  
15 they deliberately void a class of potential  
16 beneficiaries? That doesn't seem to be in the  
17 spirit of the statute, or a construction that  
18 makes sense because we have this situation now  
19 where we have --

20 MR. REIMER: Understood.

21 MR. DENHAM: So ambiguous, I guess it is.  
22 But I would think because it's omitted, I don't  
23 see why they would have done that. I don't see  
24 why they would have deliberately gone and said

1 we're going to just limit it to a surviving spouse  
2 only. That seems to make no sense.

3 And I don't think it's a result of  
4 deliberate draftsmanship that way. I think it's  
5 something they just forgot to put.

6 MR. REIMER: Let's assume you're right,  
7 it was just an omission by the legislature.

8 MR. STEPANICH: Um -- hmm.

9 MR. REIMER: Do you -- I'm going to ask  
10 both of you this. Do you think the Pension Board  
11 has the authority to read in a provision that was,  
12 as you put it, omitted inadvertently?

13 MR. STEPANICH: I believe so. I believe  
14 the Pension Board's rules and discretion to award  
15 pension benefits certainly allow for a dependent  
16 to be awarded line-of-duty benefits.

17 MR. REIMER: Mr. Denham?

18 MR. DENHAM: You just mentioned a PSEBA  
19 case, and there's a reason the Supreme Court case,  
20 Bremer versus City of Rockford, where essentially  
21 that individual was trying to obtain PSEBA  
22 benefits after an occupational disease disability  
23 statute.

24 There's a long line of PSEBA cases

1 that talks about how anyone with a line-of-duty  
2 pension is entitled potentially to PSEBA benefits.  
3 It doesn't say anything about occupational disease  
4 disability benefits. And the Supreme Court  
5 specifically said, you know, to the extent that --  
6 the intent was to -- to modify PSEBA to include  
7 occupational disease disability recipients, that's  
8 a situation for the legislature. That's not the  
9 situation for the individual pension boards.  
10 Again, the Pension Code tells pension boards  
11 essentially what it may or may not do.

12 In terms of the Pension Code being  
13 liberally construed, you know, the case law that  
14 I'm familiar with that usually seems to be in a  
15 50/50 sort of case, you kind of nudge it more  
16 towards the applicant.

17 So if there was a spouse, and it's  
18 tough to determine whether there actually is a  
19 surviving spouse and it's really a call, a mixed  
20 bag in terms of whether he or she qualifies as a  
21 surviving spouse, I think usually that is  
22 liberally construed in terms of the applicant in  
23 that way.

24 It's not -- you know, you can't

1 just make things up under the Pension Code. The  
2 Pension Code is drafted in the way it was, and to  
3 the extent that this Applicant or any applicant  
4 seeks to receive Subsection (e) benefits on behalf  
5 of a minor child under the age of 18, that  
6 provision needs to be included in Subsection (e)  
7 by the legislature. Thank you.

8 MR. STEPANICH: Can I respond to that?

9 MR. REIMER: Yeah, you can. I have  
10 another question.

11 MR. STEPANICH: Okay.

12 MR. REIMER: Go ahead.

13 MR. STEPANICH: Just but up in Subsection  
14 (a) it provides the -- like there's a pecking  
15 order. It goes from a surviving spouse, then it  
16 says if no surviving spouses are available, then  
17 to goes to a dependent.

18 I think what the legislature  
19 intended was if there's no surviving spouse, that  
20 the order in Subsection (a) be followed then. I  
21 think that's the clear conclusion that one must  
22 draw then.

23 Upon the death of surviving spouse  
24 or remarriage, a police officer's unmarried

1 children under the age of 18. That's in  
2 Subsection (a). I think that's how you read into  
3 this situation what the order of distribution of  
4 benefits would be.

5 MR. DENHAM: I know you're trying to  
6 avoid the ping-pong back and forth.

7 MR. REIMER: Go ahead. The Board wants  
8 as much information as it possibly can get on this  
9 issue.

10 MR. DENHAM: I don't really agree with  
11 your argument, but it would be more viable if not  
12 for Subsections (b) and (c).

13 What you're saying Subsection (e)  
14 does is exactly what Subsections (b) and (c) do.  
15 What Subsections (b) and (c) do is specifically  
16 refer back, expressly refer back to Subsection (a)  
17 and say that's the line of succession we're going  
18 to have for these types of benefits.

19 To the extent that -- I know that  
20 the legislature didn't intend that for Subsection  
21 (e) because it's not written in the same way. All  
22 it's limited to is surviving spouses, and it  
23 doesn't specifically refer back to Subsection (a).

24 MR. REIMER: Okay. Members of the Board,

1 do you have any questions? Not of me, but do you  
2 have any questions of counsel concerning their  
3 arguments?

4 MR. COLIS: No.

5 MR. FRANCOIS: I do not.

6 MR. FOLEY: No.

7 MR. REIMER: Okay. So, again, I think  
8 you've heard arguments, you've got briefs. And I  
9 realize that some of this stuff you've seen for  
10 the first time.

11 The options are the same as the  
12 previous two issues. You have an ability to  
13 entertain motions here publicly and discuss it or,  
14 secondly, you can adjourn into executive or closed  
15 session under Section 2(c)4 of the Open Meetings  
16 Act for purposes of deliberations.

17 MR. FOLEY: So you said Michelle has the  
18 opportunity -- or the capacity to record?

19 MR. REIMER: She does. So if that's the  
20 Board's pleasure, the Board wants to adjourn into  
21 executive or closed session under Section 2(c)4 of  
22 the Open Meetings Act at 9:38 for purposes of  
23 deliberations. That's the motion?

24 MR. FOLEY: Yes.

1 MR. CHRISTELL: Second.

2 MR. FOLEY: There's a motion and a second  
3 to go into executive session. I'll do a roll  
4 call. Christell?

5 MR. CHRISTELL: Yes.

6 MR. FOLEY: Colis?

7 MR. COLIS: Yes.

8 MR. FOLEY: Francois?

9 MR. FRANCOIS: Yes.

10 MR. FOLEY: Untiedt?

11 MR. UNTIEDT: Yes.

12 MR. FOLEY: Foley is a yes.

13 MR. REIMER: If we could ask you folks to  
14 step out, that way we'll all be here. We'll take  
15 a break.

16 (WHEREUPON, a short recess was  
17 taken.)

18 (WHEREUPON, the Board adjourned  
19 into executive session.)

20 MR. REIMER: At 10:35, the Board needs to  
21 entertain a motion to return to public or open  
22 session. Is there such a motion?

23 MR. CHRISTELL: So moved.

24 MR. REIMER: Is there a second?

1 MR. COLIS: Second.

2 MR. REIMER: There's a second. Is there  
3 any discussion? If not, please do a roll call  
4 vote.

5 MR. FOLEY: Roll call vote. Christell?

6 MR. CHRISTELL: Yes.

7 MR. FOLEY: Colis?

8 MR. COLIS: Yes.

9 MR. FOLEY: Francois?

10 MR. FRANCOIS: Yes.

11 MR. FOLEY: Untiedt?

12 MR. UNTIEDT: Yes.

13 MR. FOLEY: Foley is a yes.

14 MR. REIMER: Thank you. The Board is now  
15 back in public or open session. No final action  
16 was taken. The Board met briefly in executive or  
17 closed session and the matter was recorded as  
18 required by law.

19 The Board has considered the  
20 arguments of the parties, the documents that have  
21 been admitted into the administrative record to  
22 date.

23 I believe now that the Board is in  
24 a position to entertain motions, and it's my



1 understanding the Board first wants to make a  
2 motion or entertain a motion to grant the  
3 Village's motion to dismiss the Section 3-112(c)  
4 claim based on a lack of jurisdiction. Is there a  
5 motion on that?

6 MR. FOLEY: Yes.

7 MR. REIMER: There's a motion.

8 MR. COLIS: Is that the (c) claim or the  
9 (e) claim?

10 MR. REIMER: The (e) claim, pardon me,  
11 the (e) claim.

12 So this is a motion to dismiss,  
13 based on lack of jurisdiction, the Subsection  
14 3-112(e) claim, so the line-of-duty surviving  
15 spouse provision claim.

16 MR. FOLEY: Correct.

17 MR. REIMER: That's your motion?

18 MR. FOLEY: That's my motion.

19 MR. REIMER: Is there a second?

20 MR. COLIS: Second.

21 MR. REIMER: There is a second. Is there  
22 a roll call vote?

23 MR. FOLEY: Yes. Roll call vote.  
24 Christell?

1 MR. CHRISTELL: No.

2 MR. FOLEY: Colis?

3 MR. COLIS: Yes.

4 MR. FOLEY: Francois?

5 MR. FRANCOIS: Yes.

6 MR. FOLEY: Untiedt?

7 MR. UNTIEDT: Yes.

8 MR. FOLEY: Foley is a no.

9 MR. REIMER: So the motion passes 3-to-2.

10 So I can tell you, based on the deliberations,  
11 that this is obviously a tragedy, a very  
12 unfortunate set of circumstances. Probably the  
13 most difficult decision this Board will ever have  
14 to make. It engaged in some statutory  
15 construction. May not necessarily agree with what  
16 the legislature articulated, but perhaps powerless  
17 to do anything about it.

18 I will now prepare -- based upon  
19 the discussions and deliberations, I will now  
20 prepare a draft decision and order that will  
21 articulate the Board's determinative reasoning,  
22 which will also include those dissenters, those  
23 that voted no to the motion. And that will be  
24 prepared quickly.

1           It will be reviewed by the Board.  
2           It will be placed on the agenda. And the Board,  
3           of course, will have to motion to adopt and  
4           publish that decision and order.

5           That will be served upon all  
6           parties, and that will commence the 35-day time  
7           period within which the parties can seek judicial  
8           or administrative review.

9           So I would ask you, Board, to  
10          authorize -- entertain a motion to authorize the  
11          court reporter to prepare the transcript of the  
12          proceedings, both the public and executive.

13          MR. CHRISTELL: So moved.

14          MR. REIMER: Motion. Is there a second?

15          MR. FOLEY: Second.

16          MR. REIMER: There's a second. Is there  
17          any discussion? If not, because you're spending  
18          money, I would ask you to do a roll call vote.

19          MR. FOLEY: Okay. Christell?

20          MR. CHRISTELL: Yes.

21          MR. FOLEY: Colis?

22          MR. COLIS: Yes.

23          MR. FOLEY: Francois?

24          MR. FRANCOIS: Yes.

1 MR. FOLEY: Untiedt?

2 MR. UNTIEDT: Yes.

3 MR. FOLEY: Foley is a yes.

4 MR. REIMER: Unless there's any other  
5 matters before the Board -- is there any other  
6 business?

7 MR. FOLEY: There's no more business.

8 MR. REIMER: You're supposed to do any  
9 public comment in every public meeting. Is there  
10 public comment? Okay. Being no public comment,  
11 then would you like to do a motion to adjourn?

12 MR. FOLEY: I motion to adjourn.

13 MR. REIMER: 10:39, motion, second. All  
14 in favor?

15 (WHEREUPON, all Board Members  
16 responded aye.)

17 MR. REIMER: Any opposed? Okay. The  
18 Board will stand adjourned. Thank you.

19 MR. STEPANICH: Thank you.

20 END OF PROCEEDINGS ON THIS DATE

21

22

23

24

1 STATE OF ILLINOIS )  
2 ) SS:  
3 COUNTY OF C O O K )

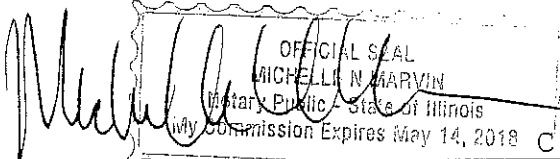
4 I, Michelle N. Marvin, a Certified  
5 Shorthand Reporter and Notary Public within and  
6 for the State of Illinois, do hereby certify:

7 That the foregoing hearing was  
8 reported stenographically by me, was thereafter  
9 reduced to a printed transcript by me and  
10 constitutes a true record of the testimony given  
11 and the proceedings had to the best of my ability;

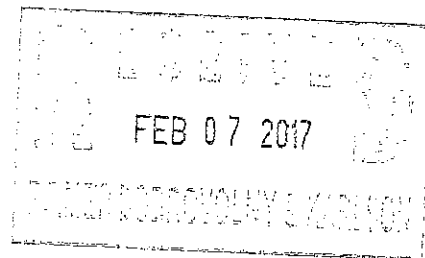
12 That said hearing was taken before  
13 me at the time and place specified;

14 That I am not a relative or  
15 employee or attorney or counsel for any of the  
16 parties hereto, nor interested directly or  
17 indirectly in the outcome of this action.

18 IN WITNESS WHEREOF, I do hereunto  
19 set my hand and affix my seal of office in Cook  
20 County, Illinois, this 26th day of September,  
21 2017.

22  
23  
24  
25  
  
OFFICIAL SEAL  
MICHELLE N. MARVIN  
Notary Public - State of Illinois  
My Commission Expires May 14, 2018 C.S.R.  
Notary Public, Cook County, Illinois  
C.S.R. No. 84-003211

*Law Offices of*  
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Telephone (847) 406-3900  
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February 3, 2017

**Sent Via Email To:**

Richard Reimer  
Reimer, Dobrovolsky & Karlson  
15 Spinning Wheel Road, Suite 310  
Hinsdale, Illinois 60521

**Re: The Estate of Officer Owen T. Masterton**

Dear Richard,

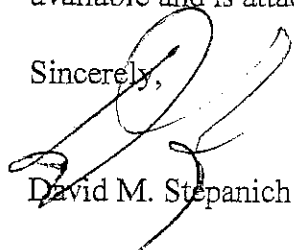
It was a pleasure speaking with you on February 1, 2017, regarding this matter.

In furtherance of our conversation, please consider this a formal request for a hearing before the Glenview Police Pension Board on the amount of pension awarded under the survivors' provision of 40 ILCS 5/3-112 to Officer Owen T. Masterton's estate.

We are specifically requesting that the board review its determination to award a 50% pension to survivors under 40 ILCS 5/3-112(c), and award pension subsequent to 40 ILCS 5/3-114.1(a). This request is made based on our representation from the Glenview Police Pension Board that there was no prejudice to filing this request at this time.

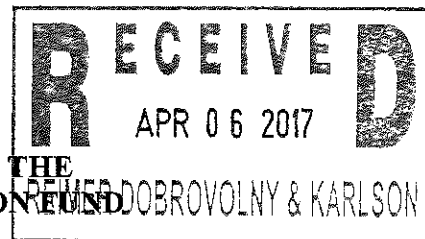
Since we have recently made a similar presentation before the Court of Claims for line of duty compensation under 815 ILCS 315/1 et. seq., a considerable amount of material is available and is attached. A statement of facts is also attached.

Sincerely,



David M. Stepanich

DMS/lb



BEFORE THE BOARD OF TRUSTEES OF THE  
VILLAGE OF GLENVIEW'S POLICE PENSION FUND

IN THE MATTER OF THE  
DISABILITY OF:

POLICE OFFICER  
OWEN MASTERTON,

Applicant.

)  
)  
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NOTICE OF FILING

To:

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PLEASE TAKE NOTICE that the Village of Glenview, by and through its attorneys of record, hereby filed with the Village of Glenview Police Pension Fund its **MOTION TO INTERVENE**; a true and correct copy of which was served on you via electronic mail and U.S. Mail this 3rd day of April, 2017.

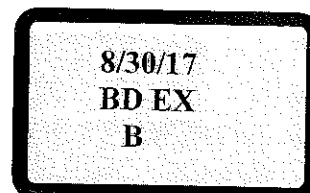
Respectfully submitted,

VILLAGE OF GLENVIEW

By: /s/ Paul A. Denham  
One of its Attorneys

Yvette A. Heintzelman  
Paul A. Denham  
CLARK BAIRD SMITH LLP  
6133 North River Road, Suite 1120  
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(847) 378-7700

{00420932.DOCX v. 1 }



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing Notice of Filing and the Village's **MOTION TO INTERVENE** was served upon the below identified individuals by placing true and correct copies of the same in the U.S. Mail, postage prepaid, this third day of April, 2017:

Richard Reimer  
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/s/ Paul A. Denham



**BEFORE THE BOARD OF TRUSTEES OF THE  
VILLAGE OF GLENVIEW'S POLICE PENSION FUND**

**IN THE MATTER OF THE  
DISABILITY OF:**

**POLICE OFFICER  
OWEN MASTERTON,**

**Applicant.**

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**VILLAGE OF GLENVIEW'S MOTION TO INTERVENE**

The Village of Glenview ("Village"), by and through its counsel, Clark Baird Smith LLP, and pursuant to the provisions of Article 3 of the Illinois Police Pension Code, 40 ILCS § 5/3-101 *et seq.*, moves to intervene in the proceedings over the application of the Estate of Owen Masterton ("Applicant") for a line of duty pension benefit. The Village seeks leave to participate fully in all Board proceedings, including but not limited to introducing and cross-examining witnesses and introducing evidence. The Village also respectfully requests copies of all documents to be introduced in the Board proceeding, and from this point forward, requests that the parties serve the Village through the undersigned counsel. Finally, the Village requests notification of the selection of the Independent Medical Evaluators and the ability to submit evidence for purposes of their evaluation. In support of its Motion to Intervene, the Village states as follows:

**INTRODUCTION**

Illinois law clearly establishes that the Board has the authority and discretion to permit parties to intervene in pension board proceedings, and here, the Village satisfies the requirements Illinois courts have set forth for intervention. First, given that Applicant is seeking line of duty benefits alleging that the decedent, Officer Owen Masterton ("Officer Masterton"), suffered a

fatal heart attack while on duty, the instant pension proceedings could have a direct impact on any future Public Safety Employee Benefits Act ("PSEBA") actions, 820 ILCS 320, et seq. In fact, the Illinois Supreme Court in *Village of Vernon Hills v. Heelan* determined that if a municipality fails to protect its rights by seeking to intervene, it cannot later contest the basis for an award of a disability pension. 2015 IL 118170 (Sept. 24, 2015). The Illinois Supreme Court has repeatedly held that the term "catastrophic injury" is synonymous with an award of a duty disability pension. *Bremer v. City of Rockford*, 2016 IL 119889, ¶24. Accordingly, refusing the Village an opportunity to intervene denies the Village its due process rights and may affect other claims, rights and remedies between Applicant and the Village. *See Heelan*, 2015 IL 118170.

In addition to potential exposure related to PSEBA benefits, the Village also has a substantial interest with respect to the expenditure of pension funds. Clearly, based on its role in levying taxes to finance the Pension Fund, ensuring the Pension Fund is adequately financed, and safeguarding the funds so that they are not unfairly diverted, the Village has a role as a fiduciary and is a party of interest in Pension Board matters. Moreover, the Village and Board have the same goal: to establish a complete and thorough evidentiary record. If permitted to participate in the proceedings, the Village will ensure that the Board has a complete record on which to evaluate Applicant's pension application. Accordingly, for the reasons set forth in detail below, the Village respectfully requests that the Board grant its Motion to Intervene in the instant proceedings.

#### **AUTHORITY AND DISCRETION TO GRANT INTERVENTION**

It is well established under Illinois law that police and fire pension funds have "the power to exercise . . . discretion in deciding whether to allow a party to intervene." *Williams v. Bd. of Trustees of the Morton Grove Firefighters' Pension Fund*, 398 Ill. App. 3d 680 (1st Dist. 2010),

citing approvingly, *Vill. of Stickney v. Bd. of Trustees of the Police Pension Fund*, 347 Ill. App. 3d 845, 851 (1st Dist. 2010) (finding that a village's participation in the pension board proceeding is left to the Board's discretion.) The Board would only abuse its discretion if its decision regarding intervention were arbitrarily and capriciously decided. *Southern Ill. Asphalt Co. v. Pollution Control Bd.*, 60 Ill. 2d 204, 207 (1975); *Hanrahan v. Williams*, 174 Ill.2d 268, 272-73 (1996) (stating "[u]nder the Administrative Review Law, courts generally do not interfere with an agency's discretionary authority unless the exercise of that discretion is arbitrary and capricious").

The Village has several legitimate and lawful interests at stake in this proceeding, each of which requires a ruling from the Board allowing intervention.

### **ARGUMENT**

#### **I. THE BOARD SHOULD GRANT THE VILLAGE'S MOTION TO INTERVENE TO PROTECT THE VILLAGE'S DUE PROCESS RIGHTS**

The Illinois Supreme Court's findings in *Heelan* obligate the Village to seek intervention. See 2015 IL 118170. In that case, the Supreme Court rejected a village's procedural due process claim in connection with PSEBA because the employer "chose not to petition to intervene in [the employee's] disability pension proceeding or otherwise object to the Board's decision." *Id.* Specifically, the court further reasoned that "[i]f an established procedure exists that appears to provide due process, a plaintiff cannot skip the procedure and use the courts to recover what the plaintiff wants." *Id.* at ¶38.

The obvious implication of this holding in *Heelan* is that the Village has a procedural due process interest in the Board's decision and its failure to participate in the Board proceeding may deprive it of its constitutional right to be heard. Based on this guidance, a public employer like the Village must seek intervention in order to protect its ability to adequately defend itself from

future PSEBA legal claims. Failing to do so may preclude the public employer from being able to litigate the existence of a “catastrophic injury” within the meaning of Section 10(a) of PSEBA. See 820 ILCS 320/10(a).

Recently, the fourth district appellate court cited *Heelan* approvingly when it quoted a 2006 case to explain procedural due process:

The [fundamental] requirement of [procedural] due process is met by having an orderly proceeding wherein a person is served with notice, actual or constructive, and has an opportunity to [present his objections] and to enforce and protect his rights. *Tri-G, Inc. v. Burke, Bosselman & Weaver*, 222 Ill.2d 218, 244 (2006).

*Sinclair v. Jones*, 2016 IL App (4th) 150712-U, ¶ 22 (internal quotations omitted).

By extension, seeking intervention would be meaningless if pension boards could freely reject such requests and unilaterally waive a municipality’s constitutional rights. Therefore, the *Heelan* decision dictates that the Board has a legal obligation to allow the Village’s intervention request. Otherwise, the Board will be guilty of depriving the Village of its constitutional procedural due process rights.

## II. THE VILLAGE SATISFIES THE REQUIREMENTS FOR INTERVENTION UNDER ILLINOIS LAW

The Village also has a lawful and legitimate interest in ensuring that the Board properly expends pension funds. Illinois courts have recognized that “protecting a municipality’s interest in the proper expenditure of funds may be a sufficient basis for permitting intervention when combined with another interest.” *Williams v. Bd. of Trustees of the Morton Grove Firefighters’ Pension Fund*, 398 Ill. App. 3d 680, 689 (1st Dist. 2010). In upholding the board’s decision to allow intervention, the court in *Williams* found the village’s interests were sufficient because it “sought to ensure the expenditure of the pension fund to which it contributed” and sought to offer additional evidence. *Id.* at 690; see also *Coyne v. Milan Police Pension Bd.*, 347 Ill. App. 3d 713, 716 (3rd Dist. 2004) (board granted the city’s motion to intervene to protect its interest

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in expenditure of pension funds and because Applicant was subject of a grievance involving similar issues). Similarly, in *Peterson v. Board of Trustees of the Firemens' Pension Fund of the City of Des Plaines*, the court specifically held that municipalities have “a right to be represented at the [Pension Board] hearing” because municipalities “have substantial interest in the expenditure of pension funds.” 5 Ill. App. 3d 180, 185 (1st Dist. 1971). In fact, excessive or ill-founded pension awards risk prematurely depleting the pension fund’s reserves thereby adversely affecting a municipality’s duty and interests. See *id.*

Quite clearly, here, the Village satisfies the legal requirements for intervention. In addition to its interest in monitoring the expenditure of pension funds, under the Pension Code, the Village satisfies the definition of a fiduciary, 40 ILCS 5/1-101.2, and a party in interest, 40 ILCS 5/1-101.3. Furthermore, the Pension Code requires the Village to levy taxes to finance the Pension Fund. 40 ILCS 5/4-118, see also *Bd. of Trustees of the Police Fund of Rockford v. City of Rockford*, 96 Ill. App. 3d 102, 420 N.E.2d 1126 (2<sup>nd</sup> Dist. 1981) (holding that the employer’s obligation to establish and administer a fund and to levy sufficient taxes was mandatory, the determination of what constitutes a “sufficient amount” is within the employer’s discretion). By virtue of its duty to levy sufficient taxes for the Pension Fund, the Village clearly has rights and interest in the fund. *Id.* Moreover, the Board’s responsibility to fund participants “involves the screening of unqualified or fraudulent disability claims, so that funds are not unfairly diverted to undeserving applicants.” *Matthews v. Chi. Transit. Auth.*, 2014 IL App. (1<sup>st</sup>) 123348, 149.

Thus, the decision to grant Applicant a disability pension will affect the Village. Any decision that Officer Masterton was disabled and/or that his disability arose in connection with his job duties may also result in Applicant filing a claim under the Public Safety Employee Benefits Protection Act, 820 ILCS 320, *et. seq.* While the Pension Board does not regulate

PSEBA benefits, its decision on a line of duty pension might directly impact the Applicant's ability to obtain such benefits. *Bremer v. City of Rockford*, 2016 IL 119889, ¶24. In this regard, the Village's clear interest in participating in the hearing as it relates to PSEBA benefits further supports and legally satisfies its request to intervene. *See Williams*, 398 Ill. App. 3d 680, 689 (1<sup>st</sup> Dist. 2010) (finding the obligation to fund the pension fund coupled with another obligation between a village and an applicant supports granting a motion to intervene).

### *Offer of Proof*

Additionally, the Village has an interest in ensuring the Board has a complete evidentiary record on which to base a reasoned decision. If allowed to intervene, the Village would supplement the record and cross-examine witnesses.<sup>1</sup> It is the Village's understanding that in December of 2014, Officer Masterton suffered a fatal heart attack during a roll call towards the beginning of his shift. In response, in or around February of 2015, the Board granted survivor benefits to Officer Masterton's son. Approximately two years later, the Estate of Officer Masterton filed this application. As an initial matter, the Village will help the Board determine (1) whether Officer Masterton's Estate has proper standing to appear before the Board under 40 ILCS 5/3-112(a), whether reopening the matter<sup>2</sup> is appropriate under 735 ILCS 5/3-10(a), 40 ILCS 5/3-144.2(a), and 40 ILCS 5/3-148.

In addition, the evidence and cross-examinations would include, but not necessarily be limited to the following:

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<sup>1</sup> Without knowing what evidence the Pension Board possesses at this time, it is difficult for the Village to identify the specific evidence it would seek to admit into evidence in order to supplement the record. Nonetheless, the Village would seek to supplement the record with relevant evidence that the Pension Board does not already possess.

<sup>2</sup> On March 30, 2017, the undersigned filed a request for documentation under the Freedom of Information Act. Depending on the response, the Village may seek to supplement and augment this Motion.

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- Presenting testimony authenticating and properly analyzing Officer Masterton's shift schedule, overtime history, and calls for service, which were attached to the application materials and erroneously summarized within Applicant's statement of facts.
- Presenting testimony regarding the nature of Officer Masterton's alleged condition, the cause of the alleged condition, relevant employment history, and the relevant chronology of events;
- Calling a medical witness or requesting the Pension Board call one or more medical witnesses to explain and clarify the reasons for their opinions;
- Introducing medical and work reports;
- Identifying additional relevant documents for the Board to subpoena; and
- Calling and cross-examining witnesses to explain Officer Masterton's medical history as it relates to the fatal incident.

The Village anticipates that the evidence will demonstrate that Officer Masterton's alleged condition did not result from and was not exacerbated by his work as a police officer, and he did not suffer the heart attack as the result of the performance and discharge of police duty. As a result, to preserve its rights under the law, the Village asks the Board to grant its Motion to Intervene.

### CONCLUSION

The Village seeks to intervene to aid the Board in upholding its fiduciary duty to the Pension Fund by providing and eliciting evidence that Applicant may not otherwise present to the Board in order to aid the Board in making a completely informed decision. As this Pension Board is aware, its fiduciary duty "is owed to all participants in the pension fund, not just [Applicant]. Perhaps the most important function of a pension board is to ensure adequate

financial resources to cover the Board's obligations to pay current and future retirement and disability benefits." *Marconi v. Chi. Hgts. Police Pension Bd.*, 225 Ill.2d 497, 544 (2006). The Board's duty is to all beneficiaries, and "cannot mean that it must cater to the optimal needs of each individual beneficiary. Because all of the pension fund beneficiaries' interests will not always be aligned, the fiduciary must "act as though it were a reasonably prudent businessperson with the interests of all the beneficiaries at heart." *Matthews v. Chi. Transit Auth.*, 2014 IL App. (1st) 123348, ¶149 *aff'd in part, rev'd in part*, 2016 IL 117638. The Board's responsibility to fund participants "involves the screening of unqualified or fraudulent disability claims, so that funds are not unfairly diverted to undeserving applicants." *Id.* Without permitting the Village to intervene, the Board's decision would be based solely on the Applicant's self-interested statements without any real screening.

Each of the interests discussed above, in and of itself, establishes a basis for the Board to grant the Village's Motion to Intervene and to allow the Village to present arguments and evidence. Refusal to allow intervention based upon the arguments set forth above would be arbitrary or capricious.



WHEREFORE, the Village of Glenview respectfully asks that the Board: (1) grant it leave to intervene in these proceedings; (2) order all documents filed with the Board be served upon the Village prior to the Board's hearing; (3) serve all future documents on the undersigned; and (4) treat the Village as a party for all purposes with full participation in the hearing.

**VILLAGE OF GLENVIEW**

By: /s/ Paul A. Denham  
One of Its Attorneys

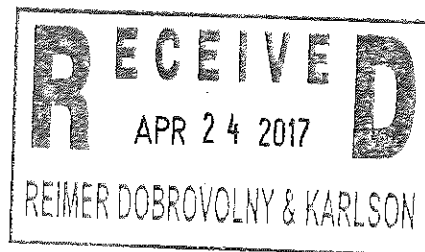
Yvette A. Heintzelman  
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Date: April 3, 2017

BEFORE THE BOARD OF TRUSTEES OF THE  
VILLAGE OF GLENVIEW'S POLICE PENSION FUND

IN THE MATTER OF THE  
DISABILITY OF:

POLICE OFFICER  
OWEN MASTERTON,

Applicant.



NOTICE OF FILING

To:

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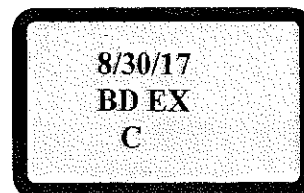
PLEASE TAKE NOTICE that the Village of Glenview, by and through its attorneys of record, hereby filed with the Village of Glenview Police Pension Fund its **BRIEF TO SUPPLEMENT ITS MOTION TO INTERVENE**; a true and correct copy of which was served on you via electronic mail and U.S. Mail this 20<sup>th</sup> day of April, 2017.

Respectfully submitted,

VILLAGE OF GLENVIEW

By: /s/ Paul A. Denham  
One of its Attorneys

Yvette A. Heintzelman  
Paul A. Denham  
CLARK BAIRD SMITH LLP  
6133 North River Road, Suite 1120  
Rosemont, Illinois 60018  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing Notice of Filing and the Village's **BRIEF TO SUPPLEMENT ITS MOTION TO INTERVENE** was served upon the below identified individuals by placing true and correct copies of the same in the U.S. Mail, postage prepaid, this 20<sup>th</sup> day of April, 2017:

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/s/ Paul A. Denham

**BEFORE THE BOARD OF TRUSTEES OF THE  
VILLAGE OF GLENVIEW'S POLICE PENSION FUND**

**IN THE MATTER OF THE  
DISABILITY OF:**

**POLICE OFFICER  
OWEN MASTERTON,**

**Applicant.**

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**VILLAGE OF GLENVIEW'S BRIEF SUPPLEMENTING ITS MOTION TO  
INTERVENE**

The Village of Glenview ("Village"), by and through its counsel, Clark Baird Smith LLP, respectfully seeks to supplement its initial petition to intervene in the proceedings over the application of the Estate of Owen Masterton ("Applicant").

**INTRODUCTION**

On April 3, 2017, the Village filed a Motion to Intervene in this matter. Within a footnote, the Village indicated that it was awaiting information responsive to an outstanding Freedom of Information Act request, and depending on the response, the Village may seek to supplement and augment its Motion. On April 11, 2017, the Board produced 225 pages of documents.

Based on a review of Board documents, it is clear that the request of Officer Masterton's estate to reopen the matter should be denied. First, under express language in the Pension Code, the only party who is entitled to an "act-of-duty" survivor award is a "surviving spouse," and because Officer Masterton was divorced at the time of his death, such an award is clearly inappropriate. In the alternative, in June of 2015, the Board executed and announced its decision to award a non-duty survivor pension to Officer Masterton's dependent son, and as such, under the Administrative Review Law, the Board no longer has jurisdiction to hear this matter. Because

the Applicant did not file a timely challenge to the Board's final administrative decision, the Board as an administrative agency cannot reconsider its prior decision.

### **BACKGROUND**

During the evening of December 6, 2014, Officer Owen Masterton ("Officer Masterton") suffered a fatal heart attack. According to the Pension Board's April 11, 2017 response to the Village's FOIA request, on December 8, 2014, Sergeant Jim Foley ("Sgt. Foley"), who serves as the Board's Secretary, contacted the Board's accounting firm, Lauterbach & Amen, and completed a form to issue a survivor pension to Officer Masterton's son, who was 10-years-old at that time ("MFM") (Ex. A). Notably, within this communication, Sgt. Foley checked the box for "active-died off duty" to describe the nature of the incident involving Officer Masterton and further wrote "at work--not 'line of duty'" on the form.

On January 2, 2015, attorney Craig Mielke, who at the time, presumably represented the interests of Kelly Masterton ("Kelly"), MFM and/or the Estate of Officer Masterton,<sup>1</sup> wrote Board attorney Rick Reimer (Ex. B). Within the correspondence, Mielke informed Reimer that the coroner has not made a finding about the cause of Officer Masterton's death, and as a result, he had "not been able to advise Kelly that there is no chance that Owen's death is somehow duty related." Notwithstanding, Mielke asked if the Pension Board could award and authorize the payment of a 50% survivorship pension (under 5/3-112(c)) "while we all wait (a few months) to see the coroner's report?"<sup>2</sup>

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<sup>1</sup> There is no indication that Mielke worked on this matter at any point after January 2, 2015. Notwithstanding, at the time of this correspondence, Mielke appeared to represent Kelly Masterton, who was Officer Masterton's ex-wife. Board records show that several months later, Kelly obtained legal documentation so that she could serve as a guardian for MFM for the purposes of obtaining pension benefits on his behalf.

<sup>2</sup> According to documentation produced by the Applicant, the Cook County Medical Examiner filed this coroner's report on February 8, 2015.

In response, on January 5, 2015, Reimer informed Mielke that because the Mastertons were divorced at the time of the incident, Kelly was not entitled to a benefit (Id.). However, while requesting the production of documents to confirm MFM's relationship to Officer Masterton, Reimer asserted that the Board could commence payment to the dependent child "on an interim basis, without prejudice to any line of duty survivor claim." At the same time, Reimer questioned whether MFM could receive a line-of-duty survivor pension entitlement:

Upon reading 5/3-112(e), it is not clear whether a dependent child would be entitled to the line of duty survivor benefits. In any event, even if he would be eligible, the burden would be on you and your client to establish that death resulted from an "act of duty."

(Id.)

Accordingly, on February 16, 2015, Sgt. Foley wrote Lauterbach & Amen that "after speaking with Reimer," the Board wanted to approve the 50% pension benefit "without prejudice" (Ex. C). The Board met just two days later on February 18, 2015. Minutes from this meeting reflect that the Board voted to grant survivorship benefits to Officer Masterton's son until he turns 18-years-old, and that the benefits were granted "without prejudice" and "pending attorney approval" (Ex. D). Similarly, the minutes from the Board's April 30, 2015 meeting also state that it was paying this benefit out, but that the Board needed an opinion from Reimer on whether "the death of Officer Masterton will be considered a line or not line of duty death" (Ex. E).

However, a few months later, it is apparent that the Board decided to move forward with awarding the non-duty 50% pension. On June 2, 2015, Sgt. Foley sent an email to Lauterbach & Amen that confirmed it was awarding the non-duty benefit (Ex. F). Attached to that communication, Board members signed the form of the final calculation (Ex. G). On the same day, Sgt. Foley emailed Kelly Masterton to announce the Board had "just received the written

legal opinion from the Board Attorney. We wish to start [MFM's] checks at this time" (Ex. H). Moreover, Sgt. Foley informed Kelly that after she submitted some outstanding documentation to the Board, "we will deposit the catch-up check and get the monthly annuity started" (*Id.*). Over the course of the next two weeks, numerous correspondence was exchanged between Sgt. Foley, Kelly and/or Lauterbach & Amen on finalizing the terms of the survivor pension, which based on information and belief, is still in effect today.

### ANALYSIS

#### 1. **Line-of-Duty Survivor Benefits Can Only be Awarded to a "Surviving Spouse."**

Considering Officer Masterton's marital status at the time of his death, it was only appropriate for the Board to award benefits under Section 3-112(c) of the Pension Code. As an initial matter, because Officer Masterton passed away with approximately 19 years of creditable service, the Board was correct to first consider applicable benefits under Section 5/3-112(c) of the Pension Code, which states that:

[u]pon the death of a police officer while in service, having at least 10 but less than 20 years of service, a pension of 1/2 of the salary attached to the rank or ranks held by the officer for one year immediately prior to death shall be payable to the survivors in the sequence provided in subsection (a) of this Section. . .

40 ILCS 5/3-112(c).

In particular, "subsection (a)" sets forth a mechanism in which the applicable pension would go to a "surviving spouse," and if there is no surviving spouse, "the police officer's unmarried children who are under age 18." Accordingly, because Officer Masterton and Kelly were divorced at the time of his untimely passing, it was appropriate to award the 50% "non-

duty” pension benefit<sup>3</sup> to his 10-year-old son, which will stop when, as outlined in the statute, MFM turns 18-years-old.

However, as Reimer suggested in his January 5, 2015 email to Mielke, a line-of-duty survivor pension is not appropriate in this situation. Unlike the non-duty survivor provision, which is expressly applicable to eligible children of the officer (provided that there is no “surviving spouse”), Section 5/3-112(e) states the following:

The pension of the surviving spouse of a police officer who dies (i) on or after January 1, 2001, (ii) without having begun to receive either a retirement pension payable under Section 3-111 or a disability pension payable under Section 3-114.1, 3-114.2, 3-114.3, or 3-114.6, and (iii) as a result of sickness, accident, or injury incurred in or resulting from the performance of an act of duty shall not be less than 100% of the salary attached to the rank held by the deceased police officer on the last day of service, notwithstanding any provision in this Article to the contrary.

40 ILCS 5/3-112(e) (emphasis added).

Quite clearly, the only eligible beneficiary of a line-of-duty survivor pension is the “surviving spouse.” Because Officer Masterton was divorced at the time of his death, irrespective of whether his “sickness. . . [was] resulting from the performance of an act of duty,” nobody was eligible to receive this statutory entitlement. As a result, the Board has no reason to hear evidence related to the Applicant’s claim to expand current benefits.

## **2. The Board No Longer Has Jurisdiction to Hear Applicant’s Untimely Motion**

Even if the Pension Code allowed the children of officers to receive line-of-duty survivor benefits, which it does not, the Pension Board’s jurisdiction over this matter ended when it followed through on a final administrative action for benefits in June of 2015. First, there is nothing in the Pension Code that would allow a board to award benefits “without prejudice” or

<sup>3</sup> While the provisions in the Pension Code dealing with survivor benefits do not have subject headings or the express terms of art, it is clear that Section 5/3-112(e) is akin to a “line-of-duty” pension and Section 5/3-112(c) resembles a “non-duty” pension, where benefits are awarded irrespective of the cause or circumstances of death.



otherwise retain jurisdiction indefinitely. Under Section 5/3-133, the Board is empowered “[t]o order the payment of pensions and other benefits and to issue certificates signed by its president and secretary to the beneficiaries stating the amount and purpose of the payment.” 40 ILCS 5/3-133. While the Board does have some statutory authority to correct a “mistake” (i.e. any “clerical or administrative error”), other “final administrative decisions” can only be appealed to the circuit court under the Administrative Review Law. 40 ILCS 5/3-144.2, 5/3-148.

Here, the evidence is clear that shortly after Officer Masterton’s death, the Board wanted to fulfill the Estate’s request, as communicated through Attorney Mielke, to immediately award the 50% survivor non-duty pension under Section 5/3-112(e) “while we all wait (a few months) to see the coroner’s report.” However, regardless of whether the Board actually has this authority, these benefits were not finalized or paid until June of 2015. At that point, approximately four months after the coroner’s report was filed, the Board clearly communicated that it was awarding a non-duty benefit and approved the final calculation of benefits. Moreover, within a June 2, 2015 email, Sgt. Foley clearly announced to Kelly that the Board was awarding such benefits. Accordingly, under the Administrative Review Law, to the extent that Officer Masterton’s estate wanted to change the award to some type of line-of-duty benefit, it had 35 days from the date it received this notice of the final administrative action. 735 ILCS 5/3-103; Johnson v. Machetti, 228 Ill. App. 3d 420, 423, 592 N.E.2d 1149, 1151 (1992) (finding a board’s letter that a 50% award had been granted was sufficient notice that the board had taken a final administrative action for administrative review purposes). Quite clearly, the Estate’s February 3, 2017 application to reopen this matter is improper as a matter of law.

On a related note, this Board does not have the legal authority to reconsider one of its prior decisions even if it wanted to do so. It is well-established that because “administrative

agencies are creatures of statute, they may allow rehearings or modify or alter their decisions only where authorized to do so by statute.” See People ex rel. Olin Corp. v. Dep’t of Labor, 95 Ill. App. 3d 1108, 1112, 420 N.E.2d 1043, 1047 (5th Dist. 1981); Board of Educ. of Mundelein Elem. Sch. Dist. No. 75 v. Ill. Educ. Labor Relations Bd., 179 Ill. App. 3d 696, 702, 534 N.E.2d 1022, 1026 (4th Dist. 1989) (“an administrative agency may allow a rehearing, or modify and alter its decisions, only when authorized to do so by statute”). Here, the Board does not have any such authorization, either under relevant provisions of the Illinois Pension Code. Indeed, Section 3-144.2 of the Pension Code provides for revisions to a previously issued pension only in situations involving “mistakes.” See 40 ILCS 5/3-144.2. Obviously, no such “mistake” is alleged to have occurred in this matter, especially where Section 3-144.2 excludes from the meaning of “mistake” any “benefit as it relates to the reasonable calculation of the benefit or aspects of the benefit based on salary, service credit, calculation or determination of a disability, date of retirement, or other facts significant to the calculation of the benefit.” Id.; see also Rossler v. Morton Grove Police Pension Bd., 178 Ill. App. 3d 769 (1st Dist. 1989); Sola v. Roselle Police Pension Bd., 342 Ill. App. 3d 227 (2d Dist. 2003). See also Kosakowski v. Bd. of Trustees of City of Calumet City Police Pension Fund, 389 Ill. App. 3d 381 (1st Dist. 2009).

### CONCLUSION

In accordance with its previous Motion, the Village of Glenview respectfully asks that the Board: (1) grant it leave to intervene in these proceedings; (2) order all documents filed with the Board be served upon the Village prior to the Board’s hearing; (3) serve all future documents on the undersigned; and (4) treat the Village as a party for all purposes with full participation in the hearing. Moreover, based on the well-established precedent and statutory authority summarized

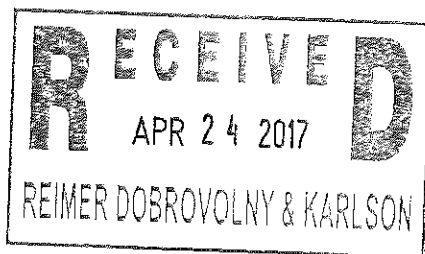
in this supplemental brief, the Village respectfully asks that (5) the Board refuse to reopen the consideration of Officer Masterton's benefits on statutory and/or jurisdictional grounds.

**VILLAGE OF GLENVIEW**

By: /s/ Paul A. Denham  
One of Its Attorneys

Yvette A. Heintzelman  
Paul A. Denham  
CLARK BAIRD SMITH LLP  
6133 North River Road, Suite 1120  
Rosemont, Illinois 60018  
(847) 378-7700

Date: April 20, 2017



# Exhibit A

Lauterbach &amp; Amen, LLP

Certified Public Accountants

27W457 Warrville Road, Warrville, IL 60555

www.lauterbachamen.com

COPY

## SPOUSAL SURVIVOR PENSION BENEFIT (TIER 1) - Information Request Form

In order to complete the Benefit Calculation Worksheet, please provide the following information:

Pension Fund Name		Village of Glenview Police Pension Fund	
Member Name		Owen T. Masterton	
Date of Death		December 6, 2014	
Member's status at time of Death: - Active - died off duty <u>X</u> - Active - died in line of duty _____ - Deferred Retiree _____ - Retired _____ - Non-duty Disability _____ - Duty Disability* _____ - Occupational Disease Disability* _____ * If work "not in line of duty" * If Duty Disability or Occupational Disease Disability, was cause of death a result of the disability? <u>Y</u> / (N)		If Member was Active at Time of Death: (Please provide Social Security #) Social Security # <u>94A8030</u> Age at Death <u>1,660.62</u> Education* _____ Hobby* _____ Other (list type)* _____ TOTAL: <u>\$96540.92</u> * If Not Applicable	
<b>SPOUSAL INFORMATION</b>			
Spouse's Name		N/A	
Date of Marriage			
Home Address		# & Street City, State, ZIP	
Daytime Phone		Email Address	
Date of Birth		Social Security Number	
<b>DEPENDENT INFORMATION</b>			
	Name	Date of Birth	Social Security #
Dependent*	Michael E. Masterton		Y / (N)
Dependent*			Y / N
Dependent*			Y / N
Dependent*			Y / N
Dependent*			Y / N
Dependent*			Y / N
* List dependent if under age 18 or legally, physically or mentally handicapped.			
By signing below, I certify that the information above is accurate to the best of my knowledge.			
Signature of Pension Fund Board Trustee		Date	
James J. Foley		12/09/2014	

# Exhibit B

**Richard Reimer**

---

**From:** Richard Reimer  
**Sent:** Monday, January 05, 2015 11:25 AM  
**To:** 'Craig S. Mielke'  
**Cc:** Jim Foley (jfoley@glenview.il.us)  
**Subject:** RE: Owen Masterton Village of Glenview Pension Board

**Importance:** High

Craig; The Pension Board can commence payment to the dependent child, on an interim basis, without prejudice to any line of duty survivor claim. However, the Board will need proof of guardianship and/or sole custodial parental status. The Board will also need the son's social security number and some additional information before benefits can commence.. Kelly was informed of what is needed. Any questions can be directed to Board Secretary James Foley. My understanding is that there has been a divorce, so the ex-spouse is not a "surviving spouse" within the meaning of Section 5/3-112(a) of the Pension Code, so only the dependent son would be eligible for benefits until he reaches age 18. Upon reading 5/3-112(e), it is not clear whether a dependent child would be entitled to the line of duty survivor benefits. In any event, even if he would be eligible, the burden would be on you and your client to establish that death resulted from an "act of duty".

---

**From:** Craig S. Mielke [mailto:[csm@fmcolaw.com](mailto:csm@fmcolaw.com)]  
**Sent:** Friday, January 02, 2015 2:26 PM  
**To:** Richard Reimer  
**Cc:** [REDACTED]  
**Subject:** RE: Owen Masterton Village of Glenview Pension Board

Rick

I am resending this email as the first attempt had the wrong email for Kelly Masterton.

Thanks.

Craig S. Mielke  
 Foote, Mielke, Chavez & O'Neil, LLC  
 10 West State Street, Suite 200  
 Geneva, IL 60134  
 PH: 630-232-7450  
 FAX: 630-232-7452

---

**From:** Craig S. Mielke  
**Sent:** Friday, January 02, 2015 1:44 PM  
**To:** [rreimer@rkjaborlaw.com](mailto:rreimer@rkjaborlaw.com)  
**Cc:** [REDACTED]  
**Subject:** Owen Masterton Village of Glenview Pension Board

Rick

As you may already know, Officer Owen Masterton died recently while on duty at the Glenview Police Department. I just got off the phone with his ex-wife Kelly Masterton who is the custodial parent of their 10 year old son.

The coroner/medical examiner are still investigating and the cause of death has not been determined. Therefore, I have not been able to advise Kelly that there is no chance that Owen's death is somehow duty related.

So here are my questions:

1. Can the pension board commence payment of the "undisputed" 50% non-duty pension at the present time or must Kelly submit an application?
2. If it is necessary for Kelly to fill out a pension application and if she indicates duty and non-duty, will the pension board authorize payment of the 50% while we all wait (a few months) to see the coroner's report?

Thanks.

Craig S. Mielke  
Foote, Mielke, Chavez & O'Neil, LLC  
10 West State Street, Suite 200  
Geneva, IL 60134  
PH: 630-232-7450  
FAX: 630-232-7452



# Exhibit C

Al Molinaro

---

From: Derek Flessner <dflessner@lauterbachamen.com>  
 Sent: Monday, February 16, 2015 8:30 AM  
 To: Jim Foley  
 Cc: Maggie Bosley; Rob Francois  
 Subject: RE: Glenview Police - Masterton, Owen T.

Thank you Jim,

I would agree and I will have the schedule P updated to reflex this and we will get it to Art asap. If at any point Kelly decides to apply and it is granted, then we can always update the schedule and provide a new copy to Art, for his reports.

Thanks again,

*Derek Flessner*

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 Certified Public Accountants  
 27W457 Warrenville Road  
 Warrenville, IL 60555  
 630.393.1483 Office  
 630.393.2516 Fax  
[dflessner@lauterbachamen.com](mailto:dflessner@lauterbachamen.com)  
[www.lauterbachamen.com](http://www.lauterbachamen.com)

---

From: Jim Foley [mailto:jfoley@glenview.il.us]  
 Sent: Monday, February 16, 2015 8:27 AM  
 To: Derek Flessner  
 Cc: Maggie Bosley Forward; Rob Francois  
 Subject: RE: Glenview Police - Masterton, Owen T.

Hello Derek,

After consultation with Reimer, I will be asking the Board to approve the benefit as it is stated in the application without prejudice. If at some time in the future Kelly, his ex, makes a decision to apply to the Board for a Line-of-Duty benefit on behalf of her son, we can deal with it at that time. The application you have may, and should, be used for Art's calculation as Reimer advises this is the minimum benefit that would have to be paid in any case.

Kelly is coming today and I was told her divorce decree outlines custody, so hopefully we will have final documentation as was requested.

Good enough?

Thanks,

Jim

---

From: Derek Flessner [mailto:dflessner@lauterbachamen.com]  
 Sent: Monday, February 16, 2015 8:18 AM  
 To: Jim Foley

# Exhibit D

## GLENVIEW POLICE PENSION MEETING

February 18, 2015

Next Meeting: April 30, 2015 @ 8:30am

### In Attendance:

K. Christell - President  
J. Foley - Board Secretary  
M. Unfriedt - Trustee

M. Bosley - Village Finance Department  
M. Tomanek - Moran Stanley  
D. Flessner - Lauterbach & Amen

### ROLL CALL:

The meeting was called to order at 8:35am by Board Secretary J. Foley.

### MINUTES:

Motion made by J. Foley and seconded by K. Christell to approve and accept the Minutes from the October 29, 2014 meeting. All were in favor.

### BOSLEY:

The Glenview State Bank "cash flow" account analysis information was presented. The information will be updated for every meeting in order to have a better understanding of the fund.

### TOMANEK:

Presented the Quarterly Performance Review Report, ending December 31, 2014.

Informed the Board that a strip came due for 2-million and those funds can be invested.

Noted that there are not a lot of Fund recommendations. Interest rates are coming down because foreign investors are buying American bonds. Earnings are still strong. The mutual funds (small caps) under performed, fixed are very strong, and there was a lag on the total equity side.

Made a Board recommendation to exit Royce Premier Small Cap Core fund and move to Gabelli Small Cap Growth. She picked it because it appears to be less volatile, a better performing fund, and has a change in fund manager. Motion was made by K. Christell and J. Foley to move away from Royce Premier.

### CHRISTELL:

Motion made by K. Christell and J. Foley for the following:

- Transfer \$500,000 into Glenview State Bank (cash) for use later in the year
- \$1,000,000 into Government Federal Agency Bond coming due in 2024. PMA is not fixed income and managed by McDonnell.
- \$500,000 into Corporate Fund Fixed Income (McDonnell)

The Board will consider putting on a presentation for members on the general workings of the pension fund, how the fund is doing, and addressing general questions. Mary and her team are happy to coordinate the presentation.

### FOLEY:

Officer's Laurance Drish and Bogdan Nenciu (both lateral moves) bought back time toward their Glenview pension.

Motion made by J. Foley and seconded by M. Untiedt to accept the benefit increases by Lauterbach & Amen.

The new contract for Lauterbach and Amen has been approved for the next three years. There was a motion to accept the contract (J. Foley & K. Christell). All were in favor. The contract has been signed by Board President K. Christell.

Trustee Untiedt attended an educational seminar. The cost (\$150.00) of the seminar was refunded to him. Motion was made for reimbursement by J. Foley and K. Christell.

Affidavits for retiree proof of pension eligibility will be sent out by L & A.

Art Tepfer will continue to produce the Actuary Report. Motion was made and accepted (J. Foley and M. Untiedt) to hire Art at a cost of \$2500.00.

Announced the retirement of Don Hohs. His pension request was approved by the Board via Motion (J. Foley & K. Christell).

A new police officer (Jonathan Ring) was accepted into the police pension fund. Motion by J. Foley and K. Christell.

Officer Owen Masterton's survivor benefits will go to his son, Michael Masterton. Michael will receive 50% until he turns 18-years old. Motion by J. Foley and seconded by K. Christell to approve and start the benefit process at 50% (without prejudice) pending attorney approval.

Reminded the Board members everyone must fill out their Cook County Statement of Interest.

Board Secretary J. Foley and Trustee M. Untiedt are both up for election. A form letter will be sent to all retirees providing them with the information.

#### DEREK:

Presented the Glenview Police Pension Fund Monthly Financial Report, for the Month Ending December 31, 2014. He also presented the Glenview Police Pension Fund Statement of Net Position - Modified cash Basis As of December 31, 2014.

The Department of Insurance Report (DOI) information will be provided to Maggie Bosley by the end of February for filing purposed which is June 30, 2015. A copy will also be provided to the Board.

Motion made to adjourn the meeting at 10:20am.

The next meeting is scheduled for April 30, 2015



Kevin Christell - President  
Glenview Police Pension Board

# Exhibit E

# GLENVIEW POLICE PENSION MEETING

April 30, 2015

Next Meeting: July 22, 2015 @ 8:30am

## In Attendance:

K. Christell - President  
G. Colis - Vice President  
J. Foley - Board Secretary  
M. Untiedt - Trustee

M. Bosley - Village Finance Department  
R. Francois - Trustee  
M. Tomanek - Moran Stanley  
D. Flessner - Lauterbach & Amen  
A. Tepfer - Actuary

## ROLL CALL:

The meeting was called to order at 8:31am by Board Secretary J. Foley.

## MINUTES:

Motion made by J. Foley and seconded by K. Christell to approve and accept the Minutes from the February 18, 2015 meeting with one adjustment. All were in favor.

## TOMANEK:

Presented the Quarterly Performance Review ending March 31, 2015.

Combined cash is under 2-million and Mary will provide to the board a report of all asset allocations.

The quarter in review shows declining commodity prices and a rising dollar caused headwinds and increased market volatility. More than 20 global central banks have done some sort of easing. Equities, broadly benefited; the S&P was up nearly 1%, and internationally, the MSCI EAFE, up 5.0%. The US yield curve stopped flattening, with longer duration and credit outperforming. Commercial real estate rents grew at 4-6% annually. While the oil and gas industry weakened, consumers used their energy savings to shore up balance sheets.

Looking ahead, heightened market volatility will continue. Equities, particularly European, Small and Mid-Cap expected to outperform. The Federal Reserve now anticipated to raise rates this year, we think they will wait until late 2015, followed by a pause and further gradual rate hikes. Strong potential in Q4-2015 for "full" employment (5.1% unemployment) and for wage growth to improve.

Graystone during this quarter assisted with transfer of funds from Royce Sm Cap to Gabelli Sm Cap Growth, attended Graystone Annual Director meeting, met with MS Global Investment Committee, updated Secular (20-yr+) Return and Volatility Estimates, and developed GASB 68 reporting methodology and submission.

Under Manager/Fund Issues, more active equity strategies began to outperform passive for the quarter and it is recommended the board invest available cash equivalents 45/55 into fixed income, Segall Bryant, and Franklin Mutual European.

**FOLEY:**

Probationary officers Laurance Drish and Bogdan Nenciu have been accepted into the police pension fund.

The pension fund has received credible service transfers of pension monies on officers L. Drish (Manhattan PD) and B. Nenciu (Winnetka PD) pension funds. Motion was made by J. Foley and seconded by K. Christell to accept their new hire dates of May 5, 2011 for L. Drish and 6/30/11 for B. Nenciu.

to the Manhattan Police Department requested reimbursement of monies in the amount of \$16,842.78 from Officer Drish's transfer of service. This issue will be turned over to Attorney Reimer.

Pension benefit has been paid out to Michael Masterton, son of Owen Masterton (deceased December 6, 2014).

The pension board has requested a legal document deferring acting on this decision pending instructions from Attorney Reimer (account information). Opinion from council is also needed if the death of Officer Masterton will be considered a line or not line of duty death. A motion was made by J. Foley and seconded by K. Christell to authorize payment for R. Reimer for the opinion. All were in favor.

Affidavits were sent out to retirees. All signed affidavits were received with the exception of 9. A second letter will be sent. If no notification is received after several attempts, pension payments will be stopped.

There is an updated agreement with PMA as the investment provider for the Village of Glenview Police Pension Fund.

The Board wishes to keep the current liability insurance with CHUBB insurance company so the policy will be continued. J. Foley has been authorized to approve up to \$18,000 to enter into another agreement for 1-year. Motion made to continue to liability insurance by M. Untiedt and seconded by G. Colis. All in favor.

Officer Ed Castellano and John Watson have retired. Motion made by J. Foley and seconded by K. Christell for payment of retirement benefits.

Retired Officer John Shay has passed away. Motion made by J. Foley and seconded by K. Christell for survivor benefits in the amount of \$43,399.20 to his spouse. All in favor.

Probationary new hire Carmela Christensen hired on March 26, 2015. Motion made by J. Foley and seconded by G. Colis to accept Officer Christensen into the police pension fund. All in favor.

**D. FLESSNER:**

Presented the Glenview Police Pension Fund Monthly Financial Report for the month ending March 31, 2015 and the Statement of Net Position - Modified Cash Basis.



**M. BOSLEY:**

Presented the police pension fund cash flow analysis showing a balance of \$1,103,144.43 as of 4/30/15.

**A. TEPFER:**

Presented the following:

- GASB Statement No. 68 Employer Reporting Accounting Schedule December 31, 2014
- Actuarial Valuation as of January 1, 2015 for the fiscal year ending December 31, 2015
- Invoice (\$4500.00) for services rendered in preparation of the GASB Statement and Actuarial valuation

Explained the mortality table and how it was created. The most recent RP2000 is the most current mortality table. The table consists of a major multi-analysis. With enhancements, this is the table used by Art since 2003.

The RP2014 table is a brand new mortality published but excludes public sector employees. Another table will be published in the future on public sector employees. IMRF is now using the RP2014 table with adjustments.

There has been a slip in the pension funded percentage to 72.9%. This slip is due to the mortality table change. The bottom line is, more money is requested from the Village due to a more appropriate modern table and GASB (90% to 100%). He is recommending the shift to 100%

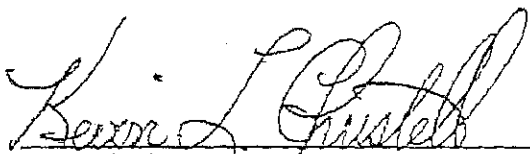
Introduced two changes:

- Will be using the RP2000 projected to 2015 on scale BB published plate depicting people live longer. This is a mortality improvement scale.
- Will be recommending calculations from 90% to 100% (fund information are on the level of 100% level dollar).

**G. COLIS:**

Recommends Pension Board schedules a meeting with Village Manager Hileman to explain the changes and issues related to the changes in the mortality table and funding rate.

Motion to adjourned by J. Foley and seconded by M. Untiedt at 11:10am.



Kevin Christell  
Pension Board President

# Exhibit F

**Al Molinaro**

---

**From:** Derek Flessner <dflessner@lauterbachamen.com>  
**Sent:** Tuesday, June 02, 2015 11:44 AM  
**To:** Jim Foley  
**Subject:** RE: Masterton

Thank you Jim, will do!

I have also sent this to our benefits department and asked that they let me know if they will need anything else.

*Derek Flessner*

Lauterbach & Amen, LLP  
 Certified Public Accountants  
 27W457 Warrenville Road  
 Warrenville, IL 60555  
 630.393.1483 Office  
 630.393.2516 Fax  
[dflessner@lauterbachamen.com](mailto:dflessner@lauterbachamen.com)  
[www.lauterbachamen.com](http://www.lauterbachamen.com)

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**From:** Jim Foley [mailto:jfoley@glerview.il.us]  
**Sent:** Tuesday, June 02, 2015 10:24 AM  
**To:** Derek Flessner  
**Subject:** RE: Masterton

Hello Derek,  
 Please see the response to your points.  
 I just received the letter from Reimer stating we have to start benefits.  
 I am notifying Kelly Masterton and having her get you the tax form and direct deposit.  
 Please let me know when she gets those forms to you, if I am not cc'd.  
 Thanks,  
 Jim

1. Non-duty death
2. Michael Masterton SSN [REDACTED]
3. Kelly Masterton, [REDACTED]
4. Documents sent to Kelly with instructions to get them to you.
5. Signed and Attached

---

**From:** Derek Flessner [mailto:dflessner@lauterbachamen.com]  
**Sent:** Friday, April 10, 2015 11:22 AM  
**To:** Jim Foley  
**Subject:** RE: Masterton

FILED DATE: 9/21/2018 1:51 PM 2018CH03503

Hello Jim,

Thank you for the update, below is a list of things we will still need in order to finish and pay the benefit.

1. Confirmation of the type of pension – non duty death or line of duty death. (The application states active-non duty, however there was an email that suggested that a guardian may choose to file for a line of duty death.
2. Social Security number for the dependent-Michael Masterton.
3. Guardian name and mailing address or email address.
4. Direct deposit and Federal withholding form
5. I've attached the benefit calculation worksheet that we need Board Approval.

Thanks again,

*Derek Flessner*

Lauterbach & Amen, LLP  
Certified Public Accountants  
27W457 Warrenville Road  
Warrenville, IL 60555  
630.393.1483 Office  
630.393.2516 Fax  
[dflessner@lauterbachamen.com](mailto:dflessner@lauterbachamen.com)  
[www.lauterbachamen.com](http://www.lauterbachamen.com)

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From: Jim Foley [<mailto:jfoley@glenview.il.us>]  
Sent: Thursday, April 09, 2015 1:33 PM  
To: Derek Flessner  
Cc: Rob Francois  
Subject: Masterton

Hello Derek,

I received temporary guardianship paper from Kelly Masterton today.

I am going to run it by Reimer, if he gives the 'OK' what will you need from her/me to effect deposit of funds?

Thanks,

Jim

Sergeant James Foley  
2500 East Lake Avenue  
Glenview, IL 60026  
847-901-6113

# Exhibit G

## GLENVIEW POLICE PENSION FUND

Dependent  
Survivor 10 - <50

## Pension Calculation History Worksheet

Personal Data  
REVIEWED AND APPROVED BY PENSION FUND:

Date: 8/2/15

Name: James L. Foley, Secretary

Signature: *James L. Foley*

Date: 8/1/15

Name: *Michael F. Masterton*Signature: *Michael F. Masterton*

Name

Michael F. Masterton

Social Security Number

Dependent Date of Birth

Dependent Attains Age 18

Nontaxable Amount of Annual Pension

Distribution Code

Retirement/Disability Date

Amount of the Originally Granted Monthly Pension

0.00

4

12/07/14

\$4,022.54

## Pension Calculation History

Date	Description	Amount of Change	Amount of Monthly Pension	Amount of Annual Pension	Nontaxable Amount of Annual Pension
12/07/14	Original Pension (prorated)		3,243.98		
01/01/15	Original Pension		4,022.54	48,270.48	0.00
07/01/22	Final Monthly Benefit (prorated)	(1,946.39)	2,076.15		0.00
08/01/22	Benefits Cease (Age 18)	(2,076.15)	0.00		0.00

SURVIVING SPOUSE BENEFITS - NO INCREASES

# Exhibit H

**Al Molinaro**

---

**From:** Jim Foley  
**Sent:** Tuesday, June 02, 2015 10:27 AM  
**To:** [REDACTED]  
**Subject:** Forms  
**Attachments:** 2015\_Federal Withholding.pdf; Direct Deposit.pdf

Hi Kelly,

I have just received the written legal opinion from the Board Attorney.

We wish to start Michael's checks at this time. There are two forms attached that need to be completed.

You can send them directly to our account manager at Lauterbach and Amen, Derek Flessner at [dflessner@lauterbachamen.com](mailto:dflessner@lauterbachamen.com) but please cc me so I know the process is completed.

One is the Federal Tax and the other is for direct deposit. As soon as completed, we will deposit the catch-up check and get the monthly annuity started.

I will also call you -

Thank you for your patience and I apologize for any hardship that may have resulted.

Jim

Sergeant James Foley  
2500 East Lake Avenue  
Glenview, IL 60026  
847-901-6113



# REIMER DOBROVOLNY & KARLSON LLC

A PUBLIC SAFETY LAW FIRM

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840 S. SPRING STREET, SUITE D  
SPRINGFIELD, ILLINOIS 62704

May 9, 2017

David Stepanich, Esq.  
Law Offices of David Stepanich  
4017 Old Grand Avenue  
Gurnee, IL 60031

Yvette A. Heintzelman, Esq.  
Clark Baird Smith LLP  
6133 North River Road, Suite 1120  
Rosemont, Illinois 60018

*By Email at [dms@stepanichlaw.com](mailto:dms@stepanichlaw.com) and [yheintzelman@cbslawyers.com](mailto:yheintzelman@cbslawyers.com) and First Class Mail*

Re: Line of Duty Dependent Children's Benefit – Owen Masterton

Mr. Stepanich & Ms. Heintzelman:

As you are aware, the undersigned is legal counsel for the Glenview Police Pension Fund. On April 20, 2017, the Pension Board met to discuss the above-referenced matter.

At the April 20, 2017 Board meeting, the Pension Board passed the following motions:

1. The RDK law firm was appointed and directed to serve as hearing officer for the Pension Board during the pendency of the Masterton matter and is authorized to administer all pre-hearing and administrative matters (including but not limited to coordinated pre-hearing briefing and scheduling of hearings);
2. Prior to developing a factual record, the Pension Board will hear arguments and evidence related to the Village's Motion to Intervene and whether or not the Pension Board has jurisdiction over this matter; and
3. Should the Pension Board have jurisdiction over the Masterton matter, it will have the case reviewed by three physicians selected by INSPE.

8/30/17  
BD EX  
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SR000113

David M. Stepanich, Esq.  
Yvette A. Heintzelman, Esq.  
May 9, 2017  
Page Two

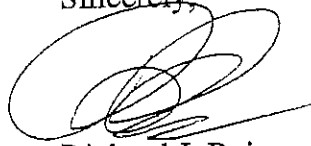
With respect to the Village's Motion to Intervene, the Applicant will have fourteen days or on or before May 23, 2017, to file a written objection, if any, to the Village's Motion to Intervene. The Village will have seven days, or until on or before May 30, 2017 to file its reply. Upon receipt of the briefs, the Pension Board will set this matter for an evidentiary hearing before the Board for the purposes of determining whether or not to grant the Village's Motion to Intervene. Mr. Stepanich, if you have no objection, please advise me in writing and the Village's motion will be granted. A court reporter will be present.

Service can be made by filing electronic copies with my office, by the close of business one each of those dates. Please serve the other party with copies of those briefs. Service on the Board will not be necessary.

Once the Hearing is scheduled on the Village's Motion to Intervene, after the Pension Board rules on the Village's Motion to Intervene, whichever parties remain in the case should be prepared to argue whether or not the Pension Board has jurisdiction over this matter. Specifically, the parties should be prepared to argue whether or not 40 ILCS §5/3-112(e) of the Pension Code providing for payment of a line of duty death to a "surviving spouse" would include a "dependent child." Arguments will be heard the same day as the Intervention Hearing. Please bring copies of any authorities you will rely upon to that Hearing.

Please contact the undersigned should you have any questions concerning this matter. Thank you in advance for your anticipated cooperation in this matter.

Sincerely,



Richard J. Reimer

RJR/mw

cc: Sgt. James Foley, Secretary  
Glenview Police Pension Board

Law Offices of  
**DAVID M. STEPANICH**  
4017 Old Grand Avenue  
Gurnee, Illinois 60031  
Telephone (847) 406-3900  
dms@stepanichlaw.com

May 23, 2017

**Sent Via Email To:**

Richard J. Reimer, Esq.  
Reimer, Dobrovolsky & Karlson  
15 Spinning Wheel Road, Suite 310  
Hinsdale, Illinois 60521  
rreimer@rdklaborlaw.com

Yvette A. Heintzelman, Esq.  
Clark Baird Smith LLP  
6133 North River Road, Suite 1120  
Rosemont, Illinois 60018  
yheintzelman@cbslawyers.com

**Re: Line of Duty Benefit; Officer Owen T. Masterton**

Dear Mr. Reimer,

I am in receipt of your letter dated May 9, 2017 regarding the request of the Village of Glenview to intervene in the proceeding and their accompanying motions which resemble motions to dismiss for lack of jurisdiction and a motion attacking the merits of the petition.

In regards to the petition to intervene in general my review of the relevant case law and the tone of your correspondence indicate that it is likely the pension board would allow the Village to intervene, and it seems as though they should intervene in order to preserve their rights down the line. For those reasons we are not objecting to them intervening in the instant proceeding.

My understanding of the sequence of events, which is also evident in the board's minutes, is that there was "no prejudice" attached to the awarding of the initial pension and therefore the board explicitly guaranteed the applicant's petition could be heard at a later date and that the 34 day time period was not applicable. I have been assured that was the board's understanding by one member of the board, and it seems as though the jurisdictional issue is moot. Therefore, I object on behalf of the applicant to any argument regarding timeliness and the board's ability to hear the petition. As to the recipients of the benefits, I will address that argument when given the opportunity based upon the pension board's schedule.

While we are not objecting to the Village's participation, I note that at least 2

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members of the board are directly appointed by the Village of Glenview and it is our hope that they will remain fair and impartial, and give the applicant an opportunity to present their petition.

Sincerely,



David M. Stepanich

DMS/lb

**VILLAGE OF GLENVIEW'S POLICE PENSION BOARD**

IN THE MATTER OF

ESTATE OF OWEN T. MASTERTON  
LINE OF DUTY PENSION REQUEST

v.

VILLAGE OF GLENVIEW

**RESPONSE TO THE VILLAGE OF GLENVIEW'S MEMORANDUM**

**INTRODUCTION AND FACTUAL BACKGROUND**

This claim emanates from the unfortunate circumstances involving the death of Officer Owen T. Masterton on December 6, 2014 at the Glenview Police Department. At the time of his death, Officer Masterton had been a police officer employed by the Village of Glenview since June of 1995, and had been a police officer for 19½ years. Also at the time of his death, Officer Masterton was located on the grounds of the Glenview Police Department in roll call as he was commencing his shift.

Kelly A. Masterton, Owen Masterton's ex-wife at the time of his death, is guardian of the Estate of Michael F. Masterton, the couples only child who is now 12 years old, has filed a request with this pension board to award line of duty benefits under the police pension provisions of 40 ILCS 5/3-112. The request was submitted on February 3, 2017, pursuant to representations from the board that the previous determination of the appropriate pension award was without prejudice to a subsequent request to file for line of duty benefits on behalf of Owen T. Masterton's estate. Communications between the pension board attorney, the pension board's accountant,

and board member Foley all agree that the matter of a line of duty request was reserved.

**(Exhibit A)** This present action is that request.

The relevant minutes of the pension board's meetings from February 18, 2015 indicated the pension awarded would be fifty-percent (50%) of Officer Masterton's salary at the time of his death, "without prejudice", which equates to §3-112(c). **(Exhibit B)** The award was subject to review by the board's own conduct and representations. The board's representations were that the request for complete pension benefits or one hundred-percent (100%) equating to the award under §3-112(e) would be contemplated if filed at a subsequent time. The board minutes from April and October of 2015 definitively show that there was no final decision ever made regarding line of duty benefits. **(Exhibit C)** It is only since the Village of Glenview has asked leave to intervene in the present proceeding that the question of the ability of the board to delay that decision has been questioned.

In the memorandum submitted by the Village of Glenview the Village makes the claim that the request is time barred by the provisions of the Administrative Review Act, and then makes the rather startling argument that the benefits under §3-112(e) are only available to a surviving spouse and since Officer Masterton was divorced at the time of his death such benefits are not available to anyone. Apparently, the Village of Glenview believes that the late Officer Masterton's son is precluded from receiving any line of duty benefits. For reasons that we will briefly address below, both arguments are strained and lack merit. The real issue should simply be presented to the pension board for its

consideration, which is whether or not the circumstance warrant line of duty benefits award.

### ARGUMENT

As a primary matter, the Village of Glenview suggests that the police pension board does not have the authority to make its own rules as to which matters to consider and in what period of time they should be discussed. The Village of Glenview makes an argument that the police pension board is without jurisdiction to hear this matter due to the board having made a "final decision" thus triggering the thirty-five (35) day period for judicial review pursuant to 735 ILCS 5/3-103. However, the board by its own representations and actions, have kept the matter open specifically for this request to be presented "without prejudice", and there is as of yet no final decision.

The board noted in its minutes of February 18, 2015 that the award of benefits was "without prejudice". The term "without prejudice" was always meant to refer to whether or not a petition for line of duty benefits would be presented before the pension board. Also on August 26, 2015 the pension board considered this matter and noted that the police pension "is waiting on a decision and final act" order for release of line of duty benefits for Officer Masterton. This matter is again addressed on October 28, 2015 where minutes note that a "request will be made to Rick Reimer to speak to the board on the Masterton dependent application and the final action on the process". There does not appear to be a subsequent discussion regarding the Masterton matter since October 28, 2016. As such, the board kept the matter open and the matter is still timely.

The Village of Glenview makes the ludicrous suggestion that based on an email from one Craig Nielke, an attorney, "presumably represented the interest of Kelly Masterton and or the Estate of Officer Masterton" to lend credence to their suggestion that the line of duty determination had been conclusively dismissed. To site the apparent hearsay representation of an attorney who does not and did not represent Kelly Masterton in any capacity is unfair to say the least. Additionally, for the firm representing the Village of Glenview to display such a careless use of the parameters of legal representation is distressing.

The Village of Glenview then goes on to make the baseless claim that the board has no authority to make provisions to order an award of benefits without prejudice to reconsidering them. However, they most certainly do, as the pension code, 40 ILCS 5/3-140, provides that the board may make rules regarding its proceedings. Hence, the Village's reliance on the thirty-five (35) day provision refers to a judicial review of administrative decision and the conclusion that the board itself does not have jurisdiction to consider the matter is entirely without merit. That is a premature argument as there is no judicial review requested, and this matter remains before this pension board. Therefore, the board had anticipated and made regulations pursuant to its contemplations for this precise cause and the Village's jurisdictional argument should be dismissed out of hand.



The Village of Glenview also argues that the language of §112(e) only refers to a surviving spouse, therefore since Officer Masterton was divorced at the time of his death there are no benefits to be disbursed and that they have nowhere to go. Such a determination would be counter to both the spirit of the pension code and inconsistent with the language of the same section of the statute. In §3-112(a) the pension code provides that “the surviving spouse shall be entitled to the pension which the police officer was then entitled”, and “upon the death of the surviving spouse or upon re-marriage of the surviving spouse if that marriage terminates the surviving spouse’s eligibility under §3-121 the police officers unmarried children who are under age 18 or a dependent shall be entitled to equal shares of such pension”.

Subsection (c) of the pension code provides for a fifty-percent pension which is currently in effect in this case, and states that the benefits should be payable to the survivors in the sequence provided in subsection (a) of this section. While subsection (e) does not contain the same language about the sequence of surviving beneficiaries, it would stand to reason that the same sequence would be in effect. Under Article III, the Illinois Pension Code governs all matters relating to the police pension fund and must be liberally construed in its provisions in favor of police officers and their surviving dependents. *Hahn v. Police Pension Fund of The City of Woodstock* 138 Ill. App.3d 206 (Ill. 1985) In construing the statute, it is the court’s duty to enforce the pension law, as enacted, according to the plain and unmistakable provisions, attaching the popular meaning to the words unless the spirit and purpose of the act dictate otherwise. *Stec v. Oak Park Police Pension Board* 561 N.E.2d 1234 (Ill. App. 1<sup>st</sup> Dist. 1990)

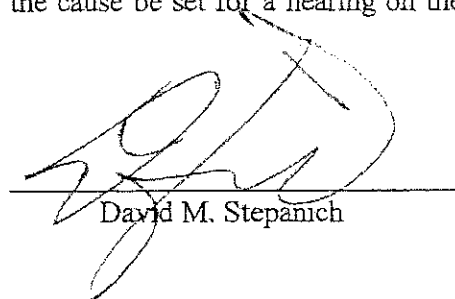
Given the current situation, the Village would have the board interpret the benefits available as only being available had Officer Masterton been married at the time of his death. He in fact was divorced and had a dependent. Under the Village's interpretation it would be preferable for Officer Masterton's estate to be eligible for line of duty benefits at one-hundred-percent (100%) of his existing salary because they wouldn't be payable rather than the fifty-percent (50%) payable to a dependent child. Such a conclusion is counter intuitive and it must be the intent of the legislature that were a police officer to die while unmarried but with dependents, the dependents would receive the benefits. A literal construction of this statute leads to no other conclusion, and it is unconvincing to argue that benefits provided for in the statute are un-claimable should the police officer die without being married.

It is also very important to note that the Village fails to acknowledge nor address 40 ILCS 5/3-114.3 which specifically provides that "any police officer who suffers a heart attack or stroke as a result of the performance and discharge of an act of duty shall be considered as having been injured in the performance of an act of duty and shall be eligible for the benefits provided under this article". Clearly the legislature specifically intended that police officers who suffered heart attacks would be considered to have been injured in the performance of an act of duty. The operative term that needs to be determined is whether this heart attack came about "as a result of the performance and discharge of police duty". That is the matter that needs to be addressed, and

notwithstanding the meddling arguments advanced by the Village of Glenview, this is what the board needs to decide.

### CONCLUSION

The memorandum of the Village is an exercise in deviating from the task at hand which is for this pension board to make a determination of whether the late Officer Masterton's estate is eligible for line of duty benefit. The Village of Glenview is obstructing the work of the pension board in an effort to obscure the real determination which the board has provided for in its prior procedure. The board has the authority to consider this request for line of duty benefits, and has specifically allotted for it in its past meetings. The Village of Glenview wishes to prevent the only heir of the late Officer Masterton from pursuing additional funds for his benefit, after his father passed away, having served the Village of Glenview for 19 ½ years as a police officer. The Village's protestations notwithstanding, the real issue is whether this was a line of duty death as described in §3-112(e) or not, and it is respectfully requested that the Village's jurisdictional and benefit arguments be denied and the cause be set for a hearing on the line of duty benefits.



David M. Stepanich

Prepared by: Law Office of David M. Stepanich  
Attorney for: KELLY A. MASTERTON, Guardian of the Estate of Michael F. Masterton  
4017 Old Grand Avenue  
Gurnee, Illinois 60031  
Telephone: (847) 406-3900  
ARDC # 6216906

# Exhibit A

**Richard Reimer**

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**From:** Richard Reimer  
**Sent:** Monday, January 05, 2015 11:25 AM  
**To:** 'Craig S. Mielke'  
**Cc:** Jim Foley (jfoley@glenview.il.us)  
**Subject:** RE: Owen Masterton Village of Glenview Pension Board

**Importance:** High

Craig: The Pension Board can commence payment to the dependent child, on an interim basis, without prejudice to any line of duty survivor claim. However, the Board will need proof of guardianship and/or sole custodial parental status. The Board will also need the son's social security number and some additional information before benefits can commence. Kelly was informed of what is needed. Any questions can be directed to Board Secretary James Foley. My understanding is that there has been a divorce, so the ex-spouse is not a "surviving spouse" within the meaning of Section 5/3-112(a) of the Pension Code, so only the dependent son would be eligible for benefits until he reaches age 18. Upon reading 5/3-112(e), it is not clear whether a dependent child would be entitled to the line of duty survivor benefits. In any event, even if he would be eligible, the burden would be on you and your client to establish that death resulted from an "act of duty".

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**From:** Craig S. Mielke [mailto:[csm@fmcoo.com](mailto:csm@fmcoo.com)]  
**Sent:** Friday, January 02, 2015 2:26 PM  
**To:** Richard Reimer  
**Cc:** [REDACTED]  
**Subject:** RE: Owen Masterton Village of Glenview Pension Board

Rick

I am resending this email as the first attempt had the wrong email for Kelly Masterton.

Thanks.

Craig S. Mielke  
 Foote, Mielke, Chavez & O'Neil, LLC  
 10 West State Street, Suite 200  
 Geneva, IL 60134  
 PH: 630-232-7450  
 FAX: 630-232-7452

---

**From:** Craig S. Mielke  
**Sent:** Friday, January 02, 2015 1:44 PM  
**To:** [reimer@rkilaborlaw.com](mailto:reimer@rkilaborlaw.com)  
**Cc:** [REDACTED]  
**Subject:** Owen Masterton Village of Glenview Pension Board

Rick

As you may already know, Officer Owen Masterton died recently while on duty at the Glenview Police Department. I just got off the phone with his ex-wife Kelly Masterton who is the custodial parent of their 10 year old son.

The coroner/medical examiner are still investigating and the cause of death has not been determined. Therefore, I have not been able to advise Kelly that there is no chance that Owen's death is somehow duty related.

So here are my questions:

1. Can the pension board commence payment of the "undisputed" 50% non-duty pension at the present time or must Kelly submit an application?
2. If it is necessary for Kelly to fill out a pension application and if she indicates duty and non-duty, will the pension board authorize payment of the 50% while we all wait (a few months) to see the coroner's report?

Thanks.

Craig S. Mielke  
Foote, Mielke, Chavez & O'Neil, LLC  
10 West State Street, Suite 200  
Geneva, IL 60134  
PH: 630-232-7450  
FAX: 630-232-7452

**Al Molinaro**

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**From:** Derek Flessner <dflessner@lauterbachamen.com>  
**Sent:** Monday, February 16, 2015 8:30 AM  
**To:** Jim Foley  
**Cc:** Maggie Bosley; Rob Francois  
**Subject:** RE: Glenview Police - Masterton, Owen T.

Thank you Jim,

I would agree and I will have the schedule P updated to reflex this and we will get it to Art asap. If at any point Kelly decides to apply and it is granted, then we can always update the schedule and provide a new copy to Art, for his reports.

Thanks again,

*Derek Flessner*

Lauterbach & Amen, LLP  
 Certified Public Accountants  
 27W457 Warrenville Road  
 Warrenville, IL 60555  
 630.393.1483 Office  
 630.393.2516 Fax  
[dflessner@lauterbachamen.com](mailto:dflessner@lauterbachamen.com)  
[www.lauterbachamen.com](http://www.lauterbachamen.com)

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**From:** Jim Foley [mailto:jfoley@glenview.il.us]  
**Sent:** Monday, February 16, 2015 8:27 AM  
**To:** Derek Flessner  
**Cc:** Maggie Bosley Forward; Rob Francois  
**Subject:** RE: Glenview Police - Masterton, Owen T.

Hello Derek,

After consultation with Reimer, I will be asking the Board to approve the benefit as it is stated in the application without prejudice. If at some time in the future Kelly, his ex, makes a decision to apply to the Board for a Line-of-Duty benefit on behalf of her son, we can deal with it at that time. The application you have may, and should, be used for Art's calculation as Reimer advises this is the minimum benefit that would have to be paid in any case.

Kelly is coming today and I was told her divorce decree outlines custody, so hopefully we will have final documentation as was requested.

Good enough?

Thanks,

Jim

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**From:** Derek Flessner [mailto:dflessner@lauterbachamen.com]  
**Sent:** Monday, February 16, 2015 8:18 AM  
**To:** Jim Foley

# Exhibit B



## GLENVIEW POLICE PENSION MEETING

February 18, 2015

Next Meeting: April 30, 2015 @ 8:30am

### In Attendance:

K. Christell - President  
J. Foley - Board Secretary  
M. Untiedt - Trustee

M. Bosley - Village Finance Department  
M. Tomanek - Moran Stanley  
D. Flessner - Lauterbach & Amen

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### ROLL CALL:

The meeting was called to order at 8:36am by Board Secretary J. Foley.

### MINUTES:

Motion made by J. Foley and seconded by K. Christell to approve and accept the Minutes from the October 29, 2014 meeting. All were in favor.

### BOSLEY:

The Glenview State Bank "cash flow" account analysis information was presented. The information will be updated for every meeting in order to have a better understanding of the fund.

### TOMANEK:

Presented the Quarterly Performance Review Report, ending December 31, 2014.

Informed the Board that a strip came due for 2-million and those funds can be invested.

Noted that there are not a lot of Fund recommendations. Interest rates are coming down because foreign investors are buying American bonds. Earnings are still strong. The mutual funds (small caps) under performed, fixed are very strong, and there was a lag on the total equity side.

Made a Board recommendation to exit Royce Premier Small Cap Core fund and move to Gabelli Small Cap Growth. She picked it because it appears to be less volatile, a better performing fund, and has a change in fund manager. Motion was made by K. Christell and J. Foley to move away from Royce Premiere.

### CHRISTELL:

Motion made by K. Christell and J. Foley for the following:

- Transfer \$500,000 into Glenview State Bank (cash) for use later in the year
- \$1,000,000 into Government Federal Agency Bond coming due in 2024. PMA is not fixed income and managed by McDonnell.
- \$500,000 into Corporate Fund Fixed Income (McDonnell)

The Board will consider putting on a presentation for members on the general workings of the pension fund, how the fund is doing, and addressing general questions. Mary and her team are happy to coordinate the presentation.

### FOLEY:

Officer's Laurance Drish and Bogdan Nenciu (both lateral moves) bought back time toward their Glenview pension.

Motion made by J. Foley and seconded by M. Untiedt to accept the benefit increases by Lauterbach & Amen.

The new contract for Lauterbach and Amen has been approved for the next three years. There was a motion to accept the contract (J. Foley & K. Christell). All were in favor. The contract has been signed by Board President K. Christell.

Trustee Untiedt attended an educational seminar. The cost (\$150.00) of the seminar was refunded to him. Motion was made for reimbursement by J. Foley and K. Christell.

Affidavits for retiree proof of pension eligibility will be sent out by L & A.

Art Tapfer will continue to produce the Actuary Report. Motion was made and accepted (J. Foley and M. Untiedt) to hire Art at a cost of \$2500.00.

Announced the retirement of Don Hobs. His pension request was approved by the Board via Motion (J. Foley & K. Christell).

A new police officer (Jonathan Ring) was accepted into the police pension fund. Motion by J. Foley and K. Christell).

Officer Owen Masterton's survivor benefits will go to his son, Michael Masterton. Michael will receive 50% until he turns 18-years old. Motion by J. Foley and seconded by K. Christell to approve and start the benefit process at 50% (without prejudice) pending attorney approval.

Reminded the Board members everyone must fill out their Cook County Statement of Interest.

Board Secretary J. Foley and Trustee M. Untiedt are both up for election. A form letter will be sent to all retirees providing them with the information.

#### **DEREK:**

Presented the Glenview Police Pension Fund Monthly Financial Report, for the Month Ending December 31, 2014. He also presented the Glenview Police Pension Fund Statement of Net Position – Modified cash Basis As of December 31, 2014.

The Department of Insurance Report (DOI) information will be provided to Maggie Bosley by the end of February for filing purposed which is June 30, 2015. A copy will also be provided to the Board.

Motion made to adjourn the meeting at 10:20am.

The next meeting is scheduled for April 30, 2015



Kevin Christell – President  
Glenview Police Pension Board

# Exhibit C

GLENVIEW POLICE PENSION MEETING  
April 30, 2015

Next Meeting: July 22, 2015 @ 8:30am

In Attendance:

K. Christell - President  
G. Colis - Vice President  
J. Foley - Board Secretary  
M. Untiedt - Trustee

M. Bosley - Village Finance Department  
R. Francois - Trustee  
M. Tomanek - Moran Stanley  
D. Flessner - Lauterbach & Amen  
A. Tepfer - Actuary

**ROLL CALL:**

The meeting was called to order at 8:31am by Board Secretary J. Foley.

**MINUTES:**

Motion made by J. Foley and seconded by K. Christell to approve and accept the Minutes from the February 18, 2015 meeting with one adjustment. All were in favor.

**TOMANEK:**

Presented the Quarterly Performance Review ending March 31, 2015.

Combined cash is under 2-million and Mary will provide to the board a report of all asset allocations.

The quarter in review shows declining commodity prices and a rising dollar caused headwinds and increased market volatility. More than 20 global central banks have done some sort of easing. Equities, broadly benefited; the S&P was up nearly 1%, and internationally, the MSCI EAFE, up 5.0%. The US yield curve stopped flattening, with longer duration and credit outperforming. Commercial real estate rents grew at 4-6% annually. While the oil and gas industry weakened, consumers used their energy savings to shore up balance sheets.

Looking ahead, heightened market volatility will continue. Equities, particularly European, Small and Mid-Cap expected to outperform. The Federal Reserve now anticipated to raise rates this year, we think they will wait until late 2015, followed by a pause and further gradual rate hikes. Strong potential in Q4-2015 for "full" employment (5.1% unemployment) and for wage growth to improve.

Graystone during this quarter assisted with transfer of funds from Royce Sm Cap to Gabelli Sm Cap Growth, attended Graystone Annual Director meeting, met with MS Global Investment Committee, updated Secular (20-yr+) Return and Volatility Estimates, and developed GASB 68 reporting methodology and submission.

Under Manager/Fund Issues, more active equity strategies began to outperform passive for the quarter and it is recommended the board invest available cash equivalents 45/55 into fixed income, Segall Bryant, and Franklin Mutual European.

**FOLEY:**

Probationary officers Laurance Drish and Bogdan Nenciu have been accepted into the police pension fund.

The pension fund has received credible service transfers of pension monies on officers L. Drish (Manhattan PD) and B. Nenciu (Winnetka PD) pension funds. Motion was made by J. Foley and seconded by K. Christell to accept their new hire dates of May 5, 2011 for L. Drish and 6/30/11 for B. Nenciu.

to the Manhattan Police Department requested reimbursement of monies in the amount of \$16,842.78 from Officer Drish's transfer of service. This issue will be turned over to Attorney Reimer.

Pension benefit has been paid out to Michael Masterton, son of Owen Masterton (deceased December 6, 2014).

The pension board has requested a legal document deferring acting on this decision pending instructions from Attorney Reimer (account information). Opinion from council is also needed if the death of Officer Masterton will be considered a line or not line of duty death. A motion was made by J. Foley and seconded by K. Christell to authorize payment for R. Reimer for the opinion. All were in favor.

Affidavits were sent out to retirees. All signed affidavits were received with the exception of 9. A second letter will be sent. If no notification is received after several attempts, pension payments will be stopped.

There is an updated agreement with PMA as the investment provider for the Village of Glenview Police Pension Fund.

The Board wishes to keep the current liability insurance with CHUBB insurance company so the policy will be continued. J. Foley has been authorized to approve up to \$18,000 to enter into another agreement for 1-year. Motion made to continue to liability insurance by M. Untiedt and seconded by G. Colis. All in favor.

Officer Ed Castellano and John Watson have retired. Motion made by J. Foley and seconded by K. Christell for payment of retirement benefits.

Retired Officer John Shay has passed away. Motion made by J. Foley and seconded by K. Christell for survivor benefits in the amount of \$43,399.20 to his spouse. All in favor.

Probationary new hire Carmela Christensen hired on March 26, 2015. Motion made by J. Foley and seconded by G. Colis to accept Officer Christensen into the police pension fund. All in favor.

**D. FLESSNER:**

Presented the Glenview Police Pension Fund Monthly Financial Report for the month ending March 31, 2015 and the Statement of Net Position – Modified Cash Basis.

**M. BOSLEY:**

Presented the police pension fund cash flow analysis showing a balance of \$1,103,144.43 as of 4/30/15.

**A. TEPFER:**

Presented the following:

- GASB Statement No. 68 Employer Reporting Accounting Schedule December 31, 2014
- Actuarial Valuation as of January 1, 2015 for the fiscal year ending December 31, 2015
- Invoice (\$4500.00) for services rendered in preparation of the GASB Statement and Actuarial valuation

Explained the mortality table and how it was created. The most recent RP2000 is the most current mortality table. The table consists of a major multi-analysis. With enhancements, this is the table used by Art since 2003.

The RP2014 table is a brand new mortality published but excludes public sector employees. Another table will be published in the future on public sector employees. IMRF is now using the RP2014 table with adjustments.

There has been a slip in the pension funded percentage to 72.9%. This slip is due to the mortality table change. The bottom line is, more money is requested from the Village due to a more appropriate modern table and GASB (90% to 100%). He is recommending the shift to 100%

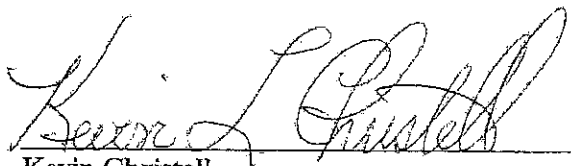
Introduced two changes:

- Will be using the RP2000 projected to 2015 on scale BB published plate depicting people live longer. This is a mortality improvement scale.
- Will be recommending calculations from 90% to 100% (fund information are on the level of 100% level dollar).

**G. COLIS:**

Recommends Pension Board schedules a meeting with Village Manager Hileman to explain the changes and issues related to the changes in the mortality table and funding rate.

Motion to adjourned by J. Foley and seconded by M. Untiedt at 11:10am.



**Kevin Christell**  
Pension Board President

GLENVIEW POLICE PENSION MEETING  
October 28, 2015

Upcoming Meetings –  
January 7, 2016 – Actuary Search @ 8:30 a.m.  
January 27, 2016 – Regular @ 8:30 a.m.

In Attendance:

K. Christell - President  
G. Colis – Vice President  
J. Foley – Board Secretary  
M. Untiedt - Trustee

M. Tomanek – Morgan Stanley  
M. Bosley – Village Finance  
R. Francois - Trustee  
D. Flessner – L & A

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**ROLL CALL:**

The meeting was called to order at 8:38am by Board Secretary J. Foley.

**MINUTES:**

Motion made by J. Foley and seconded by m. Untiedt to approve and accept the amended Minutes from the August 26, 2015 meeting. All were in favor.

Motion made by J. Foley to approve and accept the Minutes from the Police and Firefighters Pension Fund Meeting held on July 30, 2015.

**BOSLEY:**

Presented the Glenview Police Pension Fund Cash Flow Analysis. Going forward, the analysis will include year-end totals.

Will assist the Board with a Request for Quote (RFQ) for Actuary search and will draft a letter outlining the specific information.

**TOMANEK:**

Presented the Glenview Pension Fund Summary – Q3-2015. The quarter in review showed volatility spiked in the third quarter as a global equities declined amid worries about China, global growth, weak commodity prices, and the uncertainty of the Fed's decision to defer "lift Off". While equities were broadly down, the quarter was positive for higher quality corporate as well as government bonds.

Looking ahead, global rebalancing that shifts growth from the U.S. to the rest of the world is expected to continue. Overall, "things don't look so bad", as long as investors can survive the "bumpy ride". Tight global financial conditions have begun to ease, cyclical assets prices have started to accelerate, U.S. Recession Risk (MSRisk) remains low and there are slower and lower projected U.S. growth.

Graystone during the quarter assisted finance with the new investments into the fixed income and equity accounts. Graystone completed the share class conversion project and assisted in correcting Vanguard Dividend Growth Fund exchange. The Graystone written research project is also in process.

Pax World Small Cap portfolio managers and others at the fund company do invest in their own funds.

Reported she will move \$500,000 from Morgan Stanley money market account and place directly into Glenview State Bank for cash flow purposes and a bond is coming due in February 2016 for 2.6 million

The recommendation is to consider corporate bond allocation of 16% vs. 15% maximum.

**FLESSNER:**

Presented the following reports:

- Pension Fund Monthly Financial Report – Month Ended September 30, 2015
- Statement of Net Position – Modified Cash Basis as of September 30, 2015
- House Bill 5088 – Municipal Compliance Report FY December 31, 2014

A footnote will be added regarding the municipal compliance report 90% figure to reflect on the report under recommended contribution. This is the Actuary's assumption calculation. The Board wants to give the Village the 90% & 100% numbers (showing both percentages). The exact wording will be "Minimum recommendation from the Board to Village showing the 90% number." The letter will be sent by Trustee Foley to D. Flessner.

**FOLEY:**

A Request for Quote (RFQ) will be presented for an upcoming Actuary search. A forum will be provided and 20-30 minutes will be allocated. Questions will be provided in advance. The interviews will be conducted at an interim meeting on January 7, 2016 – 8:30am in the new Village Municipal Center board room.

Motion made by Trustee Foley and seconded by President Christell to allocate an additional \$500,000 McDonnell. All were in favor.

Trustees Foley and Francois attended the 2015 IPPFA Mid-America Pension Conference on October 6-9.

A request will be made to Rick Reimer (attorney) to speak to the Board on the Masterton dependent application and the final action on the pension payout process.

Discussion of the IPPFA membership (\$795.00) has been moved to the next meeting

Motion made by Trustee Foley to approve all training taken in 2015 by all Board members.  
Motion seconded by R. Francois and all others in agreement.



Motion made to nominate Trustee Francois as the FOIA Officer. Motion seconded by Trustee Untiedt and all others in agreement.

Trustee Foley will work with the State on records destruction by getting permission on the proper destruction of certain records due to space needs.  
Elaine Genovese, wife of (Vincent Genovese – ret.) pass away on July 19, 2015. Her July payment should have been prorated and based on 19-days. The overpayment has been returned.

Motion made by President Christell and seconded by Trustee Foley to adopt the Police Pension Funding Policy and the Actuarial Assumption Listing for the Tax Levy Year 2015. The information from the Funding Policy handout is for 2015 only and will/could be shared with the Actuary. The Policy was signed by K. Christell – Pension Board President. All in favor of the motion.

**Actuary Options:**

Foster and Foster – Jason Franken (Oakbrook Terrace)  
Lauterbach & Amen – Todd Schroeder (Warrenville)  
Goldstein and Associates – Sandor Goldstein (Chicago)  
Miller Cooper & Co – Jeffrey Van Wagner (Deerfield)  
Tepfer Consulting – Art Tepfer (Northbrook)

Motion made by President Christell and seconded by Trustee Foley to adjourn the meeting @ 10:40 a.m. All in favor of the motion.

**Next Meetings:**

- Actuary Search – January 7, 2016 @ 8:30 a.m. – New Board Room
- Regular Meeting – January 27, 2016 @ 8:30 a.m. – New Board Room



Kevin Christell - President  
Police Pension Board

BEFORE THE BOARD OF TRUSTEES OF THE  
GLENVIEW POLICE PENSION FUND

IN THE MATTER OF THE )  
SURVIVING CHILDREN'S BENEFIT OF: )  
OFFICER MASTERTON, )  
APPLICANT, )  
AND, )  
VILLAGE OF GLENVIEW, )  
INTERVENOR. )

NOTICE OF HEARING

TO: Mr. David M. Stepanich, Esq.  
Law Office of David M. Stepanich  
4017 Old Grand Avenue  
Gurnee, Illinois 60031

Mr. Paul Denham, Esq.  
Clark Baird Smith LLP  
6133 N. River Road, Suite 1120  
Rosemont, Illinois 60018

Please take notice that on Wednesday, August 30, 2017 at 8:30 am, a public hearing will be held before the Glenview Police Pension Board at the *Glenview Village Hall, Community Room, 2500 East Lake Avenue, Glenview, Illinois 60026*, regarding the surviving children's benefit claim of the above Applicant, pursuant to the applicable provisions of Article 3 of the Illinois Pension Code.

The public hearing will be held to receive evidence concerning the Village's Motion to Intervene, and whether the Glenview Police Pension Board has jurisdiction over this matter, and whether a surviving dependent child is entitled to line of duty survivor benefits. This will not be a hearing on the merits of the claim. The Applicant is entitled to be represented by legal counsel, to present any evidence and to respond to any evidence before the Board.

The Pension Board may adjourn to Executive or Closed Session, pursuant to §2(c)(4) of the Open Meetings Act, for purposes of deliberations, upon completion of the evidentiary hearing. No final action will be taken in Executive/Closed Session.

GLENVIEW POLICE PENSION BOARD

By: 

Attorney for Pension Board

RICHARD J. REIMER  
REIMER DOBROVOLNY & KARLSON LLC  
15 Spinning Wheel Road, Suite 310  
Hinsdale, Illinois 60521  
(630) 654-9547

AR 138

8/30/17  
BD EX  
G SR000138

CERTIFICATE OF SERVICE

Richard J. Reimer, an attorney, states that I served copies of the attached upon the below named by depositing same in the U.S. mail box located at 15 Spinning Wheel Road, Hinsdale, Illinois, this 15 day of AUGUST, 2017 properly posted for:

(X) PRIORITY MAIL SIGNATURE CONFIRMATION (X) FIRST CLASS MAIL

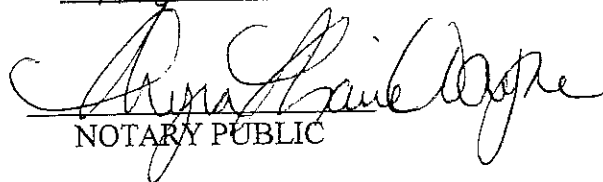
TO: Mr. David M. Stepanich, Esq.  
Law Office of David M. Stepanich  
4017 Old Grand Avenue  
Gurnee, Illinois 60031  
(By Priority Mail Signature Confirmation)

Mr. Paul Denham, Esq.  
Clark Baird Smith LLP  
6133 N. River Road, Suite 1120  
Rosemont, Illinois 60018  
(By Priority Mail Signature Confirmation)

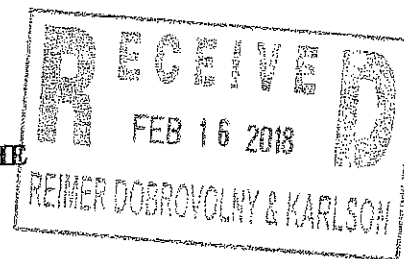


cc: Sgt. James Foley, Secretary  
Glenview Police Pension Board

SUBSCRIBED and SWORN  
to before me this 15 day  
of AUGUST, 2017.

  
NOTARY PUBLIC

**BEFORE THE BOARD OF TRUSTEES OF THE  
GLENVIEW POLICE PENSION FUND**



**IN THE MATTER OF THE SURVIVING )  
DEPENDENT CHILDREN'S BENEFIT OF: )**

**OFFICER MASTERTON, )**

**APPLICANT, )**

**AND, )**

**VILLAGE OF GLENVIEW, )**

**INTERVENOR. )**

**DECISION AND ORDER**

The Board of Trustees of the Glenview Police Pension Fund (hereinafter "Pension Board"), pursuant to the statutory authority set forth in 40 ILCS §5/3-101 *et seq.* of the Illinois Pension Code, renders the following decision concerning the application brought on behalf of the surviving dependent child of deceased police officer Owen Masterton (hereinafter the "Applicant") for line of duty survivor benefits under §5/3-112(e) of the Illinois Pension Code.

A hearing was held before the Board on August 30, 2017. The purpose of this hearing was to determine whether or not the Village of Glenview's Motion to Intervene should be granted, whether the Village of Glenview's Motion to Dismiss for lack of jurisdiction should be granted, and whether or not the Glenview Police Pension Board had jurisdiction to award a dependent child a "line of duty survivor" benefit under §5/3-112(e) of the Illinois Pension Code.

The Applicant was represented by legal counsel David M. Stepanich, and the Village of Glenview, as Intervenor, was represented by attorney Paul. A. Denham. The parties received proper notice of the hearing, of their right to be represented by legal counsel, their right to present evidence, their right to challenge any evidence, and to make arguments. No decision on the merits

of the underlying claim was heard. In other words, no determination was made as to whether Officer Masterton's death was from "performance of an act of duty."

The testimony of any witnesses and arguments of the parties, along with the documentation admitted into the administrative record was considered by the Pension Board. To the extent that any evidence, arguments, findings and/or conclusions submitted by the parties are in accordance with the findings, conclusions, and views stated herein, have been accepted, and to the extent that they are inconsistent therewith, they are rejected.

I.

STATEMENT OF FACTS

Based upon a preponderance of the evidence in the record, the Pension Board makes the following findings of fact.

1. On December 6, 2014, Glenview Police Officer and participant of the Glenview Police Pension Fund, Owen Masterton, suffered a fatal heart attack. (Bd. Ex. C p. 2)
2. At the time of his death, Officer Masterton was divorced, had not remarried, and left a surviving 10 year-old son with his ex-wife Kelly. (Bd. Ex. C. p. 2) At the time of his death, Officer Masterton was still in service as a police officer and had 19 full years of creditable service (Bd. Ex. F)
3. On January 2, 2015, attorney Craig S. Mielke sent an email to Richard J. Reimer, the attorney for the Glenview Police Pension Board, questioning whether or not the Pension Board could commence payment of the "undisputed" fifty percent (50%) non-duty pension (sic) to the dependent son, and whether or not Officer Masterton's ex-spouse was required to fill out an application, while the coroner/medical examiner was determining the cause of Officer Masterton's death. (Bd. Ex. C, attachment B)

4. Mr. Reimer responded to Mr. Mielke, that the Pension Board could commence payment to a dependent child on an interim basis without any prejudice to any line of duty survivor claim. Mr. Mielke was further advised that upon a review of §5/3-112(e), it was not clear whether a dependent child would be entitled to a line of duty survivor benefit. (Bd. Ex. C, attachment B)

5. On February 16, 2015, Pension Board President Sgt. Foley, wrote the Pension Board's accountant that, "after speaking with Reimer" the Board wanted to approve the fifty percent (50%) pension "without prejudice." (Bd. Ex. B, attachment C)

6. The Pension Board met on February 18, 2015. The minutes from this meeting reflect that the Board voted to grant survivorship benefits to Officer Masterson's son, until he turns eighteen (18), and the benefits were granted "without prejudice" and "pending attorney approval." (Bd. Ex. B, attachment D)

7. On February 3, 2017, attorney David M. Stepanich filed a request that the Pension Board "review its determination to award a fifty percent (50%) pension to survivors under 40 ILCS §5/3-112(c), and award a pension subsequent to 40 ILCS §5/3-114.1(a) (sic). (Bd. Ex. A)

8. On or about April 3, 2017, the Village of Glenview filed its Motion to Intervene. (Bd. Ex. B)

9. Without leave, and before the Pension Board convened to consider the Motion, the Village of Glenview filed its "Brief to Supplement its Motion to Intervene." (Bd. Ex. C)

10. On April 20, 2017, the Pension Board met to discuss the above referenced matter. The Pension Board passed a motion appointing the RDK law firm to serve as a hearing officer during the pendency of the Masterton matter, and authorized its law firm to administer all pre-hearing and administrative matters, including but not limited to coordinating pre-hearing briefing and scheduling of hearings. (Bd. Ex. B)

11. The Pension Board also voted to inform the parties that the Pension Board would hear arguments and evidence related to the Village's Motion to Intervene, and whether or not the Pension Board had jurisdiction over this matter. (Bd. Ex. B)

12. A briefing schedule was set, directing the Applicant to file a written objection, if any, to the Village's Motion to Intervene, and directing the Village to file a reply, at which time, the Pension Board would set this matter for hearing on the outstanding issues. (Bd. Ex. B, p. 1-2)

13. On or about May 23, 2017, the Applicant filed its written response. (Bd. Ex. E)

14. In an undated memo captioned "Response to the Village of Glenview's Memorandum" the Applicant responded to arguments concerning the "jurisdiction" of the Pension Board. (Bd. Ex. F)

15. A hearing was held on all outstanding issues, except the merits of the underlying claim, meaning whether or not Officer Masterton died as a result of an "act of duty" on August 30, 2017. The Pension Board admitted without objection Board Exhibits A through G. (Tr. 8) <sup>1</sup>

## II.

### STATUTORY PROVISIONS

The following statutory provisions are relevant to this matter and provide in pertinent part,

#### § 3-112. Pension to Survivors.

(a) Upon the death of a police officer entitled to a pension under Section 3-111, the surviving spouse shall be entitled to the pension to which the police officer was then entitled. Upon the death of the surviving spouse, or upon the remarriage of the surviving spouse if that remarriage terminates the surviving spouse's eligibility under Section 3-121, the police officer's unmarried children who are under age 18 or who are dependent because of physical or mental disability shall be entitled to equal shares of such pension. If there is no eligible surviving spouse and no eligible child, the dependent parent or parents of the officer shall be entitled to receive or share such pension until their death or marriage or remarriage after the death of the police officer.

<sup>1</sup> References are to the relevant pages of the transcript of the August 30, 2017 hearing before the Pension Board.

(e) The pension of the surviving spouse of a police officer who dies (i) on or after January 1, 2001, (ii) without having begun to receive either a retirement pension payable under Section 3-111 or a disability pension payable under Section 3-114.1, 3-114.2, 3-114.3, or 3-114.6, and (iii) as a result of sickness, accident, or injury incurred in or resulting from the performance of an act of duty shall not be less than 100% of the salary attached to the rank held by the deceased police officer on the last day of service, notwithstanding any provision in this Article to the contrary.

#### 735 ILCS §5/3-101 Definitions (in pertinent part)

"Administrative decision" or "decision" means any decision, order or determination of any administrative agency rendered in a particular case, which affects the legal rights, duties or privileges of parties and which terminates the proceedings before the administrative agency.

### III.

#### ANALYSIS

The Pension Board shall address each of the three outstanding issues before the Board. First, whether the Village's Motion to Intervene should be granted? Second, whether the Glenview Police Pension Board has jurisdiction over this matter? Third, whether a surviving dependent child is entitled to or eligible for "line of duty" survivor benefits under §5/3-112(c) of the Illinois Pension Code?

#### A. Village's Motion To Intervene

In its Motion to Intervene, the Village raises the following arguments in support of its intervention. Intervention should be granted to protect the Village's due process rights, and the Village met the requirements for intervention under Illinois case law. In addition, the Village makes an offer of proof as to additional evidence that it would offer at the hearing on the merits of the claim. (Village Petition to Intervene, Bd. Ex. 3-7) In his May 23, 2017 correspondence to the Board, Attorney Stepanich indicates that he was not objecting to the Village's Petition to Intervene. (Bd. Ex. E p. 1)

A municipality, such as the Village, does not have a statutory right to intervene. Rather, the Pension Board has discretion to allow a municipality to intervene in disability proceedings,



and the discretion must be exercised with care, and cannot be abused. *The Village of Stickney v. Board of Trustees of the Police Pension Fund of the Village of Stickney*, 347 Ill.App.3d 845, 852 (1st Dist. 2004). Whether the Board's decision to permit a municipality's petition to intervene is a close question and there is little case law for guidance. *Williams v. Board of Trustees of the Morton Grove Firefighters Pension Fund*, 398 Ill.App.3d 680, 689. Citing *Stickney*, cited *supra*, the court stated:

"A village's request to cross examine a pension applicant and its desire to create a full administrative record, without more, was not sufficient to support the Village's request to participate in the administrative hearing. 389 Ill.App.3d 689.

The court further states as follows:

"However, protecting a municipalities interest in the proper expenditure of funds, may be a sufficient basis for permitting intervention when combined with another interest." *Id.*

Exactly what constitutes the "another interest," as contemplated by the court in *Williams* is not clear. The Village argues that the Illinois Supreme Court's decision in *Vernon Hills v. Healon*, 2015 IL 118170 (September 24, 2015), established that interest.

In *Healon*, the Supreme Court rejected a municipality's procedural due process claim concerning an officer's potential claim for paid health insurance benefits under the Public Safety Employee Benefits Act ("PSEBA"), pursuant to 820 ILCS §320 *et seq.* The court held that if a municipality fails to protect its rights by seeking to intervene in an underlying disability hearing before the police pension board, it cannot later contest the basis for an award of disability benefits. *Healon*, 215 IL 118170.

When questioned at the hearing, the Applicant conceded there was a possibility that PSEBA benefits would be sought in the event that the Pension Board were to award a line of duty survivor benefit to the Applicant. (Tr. 11-12). In addition, Officer Masterton's estate has a pending claim for benefits in the court of claims for line of duty compensation pursuant to 815

ILCS §315/1 *et seq.* (Bd. Ex. A)

Recently, the Appellate Court answered the question as to whether or not potential PSEBA liability was a sufficient “interest,” mandating intervention into a police pension board proceeding. *Village of Alsip v. Portincaso*, 217 Ill.App. (1st), 153167 (2017). In that case, the pension board denied a village’s motion to intervene. The trial court reversed, and the appellate court affirmed holding that the pension board abused its discretion by failing to allow the village to intervene. The court held that the village’s stated interest in the proper expenditure of funds, and its potential liability for PSEBA benefits, were legitimate interests warranting intervention into the police pension board proceedings. *Id.*

Based on the foregoing, the majority of the Pension Board voted unanimously to grant the Village’s Motion to Intervene, finding that the Village had established a sufficient interest warranting the Village’s intervention. (Tr. p. 25-26)

**B. Jurisdiction – Whether the Pension Board’s Payment of Dependent Children’s Survivor Benefits on an Interim Basis, Without Prejudice, Constituted a Final Administrative Decision?**

The second issue before the Board is whether the Board has jurisdiction over the matter when it commenced payments to the dependent son of Officer Masterton, in June of 2015? Prior to being granted leave to intervene in this matter, the Village raised this issue in its “Brief Supplementing its Motion to Intervene.” (Bd. Ex. C, p. 5-7) As Applicant correctly points out in his “Response to the Village of Glenview’s Memorandum,” the evidence before the Board established that the minutes of the February 18, 2015 Pension Board meeting indicated that payments to Officer Masterton’s dependent son would be paid “without prejudice.” (Bd. Ex. F, Attachment B) In fact, the January 5, 2015 email to Attorney Craig Mielke, indicated that the intention of the Pension Board was to commence payments to the dependent child on an “interim basis without prejudice” to any line of duty survivor claim that might ultimately be filed. (Bd. Ex.

F, Attachment A, p. 1)

Thus, the issue raised by the Village is whether or not the Board, in making those “dependent children’s payments on an interim basis and without prejudice” constituted a “final administrative decision,” within the meaning of 735 ILCS §5/3-103 of the Code of Civil Procedure? The Pension Board finds the Village’s argument on this matter completely without merit.

Courts have held that a “final administrative decision” usually follows from the following:

1. Some type of application, i.e., retirement, disability, survivor or refund; 2. An adversarial process involving the parties affected; 3. A hearing on controverted facts. 4. An ultimate disposition rendered by an impartial fact finder, 5. The Board informs the applicant or party affected in writing of its actions. *Fields v. Schaumburg Firefighters’ Pension Board*, 383 Ill.App.3d 209, 889 N.E.2d 1167 (1st Dist. 2008); *Key Outdoor Inc. v. Department of Transportation*, 322 Ill.App.3d 316, 750 N.E.2d 709 (1st Dist. 2001)

The Illinois Supreme Court recently held that an administrative agency’s failure to properly inform plaintiff of the 35-day limitation period running from the date it was placed in the mail as opposed to the date it was received by the party, or failure to advise of the mailing date, constituted a violation of plaintiff’s due process rights. *Grimm v. Calica*, 2017 IL 120105

In the present case, it is clear that the mere payment of dependent children’s benefits on an “interim, without prejudicial basis,” was not a “final administrative decision” concerning the matters before this Pension Board. The Village first overlooks the fact that it had not yet been made a “party” to the proceeding, meaning, that it had not yet been granted leave to intervene, when it raised the question of jurisdiction. Second, the Village overlooks the definition of “final administrative decision” contained in the “Administrative Review Act.” Section 5/3-101 defines “administrative decision” as follows:

"Administrative decision" or "decision" means any decision, order or determination of any administrative agency rendered in a particular case, which affects the legal rights, duties or privileges of parties and which terminates the proceedings before the administrative agency. [emphasis added]

Clearly, the payment of benefits on an interim basis, without prejudice did not "terminate the proceedings before the Pension Board." Finally, the Applicant was not placed on notice that the "interim" decision was final and subject to administrative review. Under the Illinois Supreme Court's decision in *Grimm*, might very well have violated Applicant's due process rights.

Consequently, the Pension Board voted unanimously to deny the Village's "Motion to Dismiss," based on its argument that the Pension Board lost jurisdiction by commencement of the payment of those benefits. (Tr. 40-41).

**C. Whether §5/3-112(e) of the Pension Code Provides for Payment to a Police Officer's Dependent Son?**

The next issue before the Pension Board is whether or not §5/3-112(e) of the Illinois Pension Code, providing for line of duty death benefits to the "surviving spouse" of a police officer, would include dependent children's benefit, when there is no surviving spouse? It is without dispute that under 40 ILCS §5/3-112(a) of the Illinois Pension Code, if a police officer is entitled to benefits under 3-111 of the Pension Code dies without a surviving spouse, the officer's unmarried children under the age of eighteen (18) are entitled to benefits. What is unclear, is whether under §5/3-112(e) of the Pension Code, which provides line of duty death benefits to the surviving spouse of a police officer would apply to a dependent child? This is a case of first impression.

In its Brief Supplementing its Motion to Intervene, the Village of Glenview argues that line of duty surviving spouse benefits can only be awarded to a "surviving spouse." (Bd. Ex. C p.

4-5) The Applicant argues that the Village of Glenview's construction of §5/3-112(e) of the Pension Code would violate the spirit and intent of the Pension Code and be inconsistent with the language of the same statute. The Applicant argues that the "liberal construction" principle should favor the Applicant. (Bd. Ex. F p. 5-6)

"The cardinal rule of statutory construction, to which all other canons and rules are subordinate, is to ascertain and give effect to the intent of the legislature." *Wade v. City of North Chicago Police Pension Bd.*, 226 Ill.2d 485, 509 (2007). "Although a court should first consider the language of the statute, a court must presume that the legislature, in enacting the statute, did not intend absurdity or injustice." *Id.* at 510.

Under the Illinois Pension Code, "surviving spouse" has a definite and defined meaning. In *In re Marriage of Hannon*, 207 Ill.App.3d 329, 333 (2d Dist. 1991), a firefighter's former spouse asserted that section 4-114 of the Pension Code included former spouse within the meaning of "surviving spouse." She also argued that the firefighters' pension code did not define "surviving spouse" and that the pension statute must be construed to favor the rights of beneficiaries. *Id.*

The Court rejected the former spouse's assertion. Instead, the Court explained, "As the Fund correctly notes, an unambiguous statute shall be construed consistent with the ordinary and popularly understood meanings of its words." *Id.* The Court further reasoned, "Given the fact, and the absence of any contrary suggestion in the legislative language, we find inescapably clear that section 4-114(a)'s reference to a 'surviving spouse' includes *only* a person who is married to a pensioner and alive at the time of the pensioner's death. A former spouse, having had his marital relationship severed by dissolution, is not included in that designation." *Id.* (Emphasis added).

Here, the legislative history regarding Section 5/3-112(e) is silent regarding the meaning of "surviving spouse." Nonetheless, the firefighters' pension code is analogous to the police

officers' pension code and can be used to define the meaning and contours of the code. Furthermore, it is proper to compare separate statutes addressing the same subject to ascertain legislative intent. *Illinois-Indiana Cable Television Association v. Illinois Commerce Comm'n*, 55 Ill.2d 205, 220 (1973). However, the language used in a statute is the primary source for determining the legislature's intent and where the language is certain and unambiguous, the court's role is to enforce the statute as enacted. *People ex. Rel. Gibson v. Cannon*, 65 Ill.2d 366, 369 (1976).

In the present matter, Officer Masterton passed away with 19 years of creditable service. At the moment of his untimely death, the Mastertons were divorced, and his former spouse, Kelly Masterton, was not entitled to any pension benefit. The Pension Board correctly considered and awarded benefits under Section 5/3-112(a) of the Pension Code, which provided a mechanism for a dependent child to receive a pension benefit.

Nevertheless, to succeed in his claim under Section 5/3-112(e), the Applicant must assert the language "surviving spouse" includes a "dependent child." Section 5/3-112(e) is devoid of any reference to a "dependent child" or any similar identifiable beneficiary. In *Hannon*, the Court refused to expand the meaning of "surviving spouse" beyond its normal everyday meaning. Similarly, in the instant matter, the Pension Board declines to expand the meaning of "surviving spouse" to include a "dependent child." Section 5/3-112(e) contains plain and unambiguous language that only identifies a "surviving spouse" as a beneficiary. Nothing in this particular subsection of the Pension Code designates an alternate beneficiary. Furthermore, because the Pension Code does contemplate a "dependent child" in other sections of the code, the Pension Board should draw meaning and effect from its absence in Section 5/3-112(e).

Finally, the legislature established the pension benefit at issue and may therefore define to whom the pension intends to benefit. See *Hannon*, Ill.App.3d at 336 ("The pension code may exclude, as it has excluded, a 'former spouse' from its definition of 'surviving spouse'." ) While it is true that the Pension Code should be construed liberally, the presumption is overcome in this instance because the pension benefit is plainly stated in §5/1-112(e), and courts have clearly defined the meaning of "surviving spouse" within the Pension Code. The Applicant, a dependent child, does not qualify as a "surviving spouse" because he is not a person who was married to a pensioner at the time of the pensioner's death.

Accordingly, a majority of the Pension Board, three of five Trustees, voted to dismiss this matter. Two of the Trustees dissented.

#### IV.

#### CONCLUSIONS

1. The Pension Board's jurisdiction has subject matter jurisdiction over the Application for Dependent Children's Benefits Under §5/3-112(a);
2. The Village of Glenview has established a sufficient interest in the proceedings before this Pension Board justifying its participation as a party to these proceedings, and its Motion is Granted.
3. The Pension Board did not deprive itself of jurisdiction when it commenced payments to the dependent child under §5/3-112(a) of the Illinois Pension Code, on an interim basis and without prejudice, because payment of benefits did not constitute a "final administrative decision" within the meaning of 735 ILCS §5/3-101 of the Code of Civil Procedure, as it did not terminate the proceedings before the Pension Board;

4. Under §5/3-112(e) of the Pension Code, the Applicant, a dependent child, does not qualify as a "surviving spouse."


**IT IS THEREFORE ORDERED:**


A. For the reasons set forth herein, the Applicant's application for line of duty dependent children's benefits is dismissed under §5/3-112(e) of the Pension Code because he is not a "surviving spouse" as required under that provision.

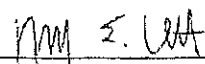
B. Pursuant to §5/3-112(a) of the Illinois Pension Code, the dependent children's benefit, awarded on an interim basis, is final and payable until such time as the Applicant attains eighteen (18) years of age.

THE BOARD OF TRUSTEES OF THE GLENVIEW  
POLICE PENSION BOARD

BY A MAJORITY OF THE PENSION BOARD  
TRUSTEES

  
George Colis, Trustee

  
Robert Francois, Trustee

  
Michael Untiedt, Trustee

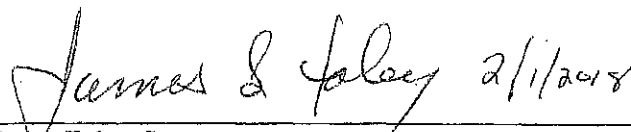


## DISSENT:

Trustees Kevin Christell, President, and James Foley, Secretary, voted "no" to the Motion to Dismiss. Trustees Christell and Foley believe that liberal construction of the Statute cause them to conclude that the term "surviving spouse" as it is used in §5/3-112(e) of the Illinois Pension Code would include a "dependent child" for purposes of the line of duty death benefits created under this provision. Trustees Christell and Foley believe that a hearing on the merits of the claim should have been held to determine whether or not Officer Masterton died as a result of an "act of duty" within the meaning of §5/3-112(e) of the Illinois Pension Code. Trustee Christell further believes that the language in §5/3-112 (e) not referencing "dependent children" was a legislative oversight and resulted in an injustice.



Kevin Christell, President



James Foley, Secretary

THIS IS A FINAL AND APPEALABLE DECISION. THIS DECISION CAN BE REVIEWED IN THE CIRCUIT COURT BY FILING A COMPLAINT FOR ADMINISTRATIVE REVIEW WITHIN 35 DAYS FROM THE DATE THAT A COPY OF THIS DECISION WAS SERVED UPON THE PARTY AFFECTED THEREBY. THE AFFECTED PARTY MUST FILE A COMPLAINT FOR ADMINISTRATIVE REVIEW WITHIN 35 DAYS FROM THE MAILING DATE OF THIS DECISION.

BEFORE THE BOARD OF TRUSTEES OF THE  
GLENVIEW POLICE PENSION FUND

IN THE MATTER OF THE SURVIVING )  
DEPENDENT CHILDREN'S BENEFIT OF: )

OFFICER MASTERTON, )

APPLICANT, )

AND, )

VILLAGE OF GLENVIEW, )

INTERVENOR. )

CERTIFICATE OF PAYMENT

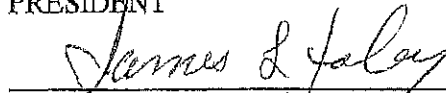
Pursuant to Section 5/3-133 and Section 5/3-112(a) of the Illinois Pension Code, this is to certify that the Applicant, Michael F. Masterton, a minor, is entitled to payment of a dependent children survivor's benefit, based upon 50% of Officer Masterton's salary at the time of his death, until Applicant attains 18 years of age or until further order of the Pension Board. The amount of the benefit has been certified by the Treasurer of the Village in accordance with 40 ILCS §5/3-141.1.

GLENVIEW POLICE PENSION BOARD

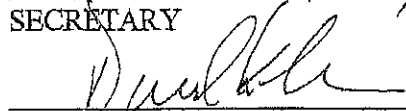
By:



PRESIDENT



SECRETARY



TREASURER, VILLAGE OF GLENVIEW

DATE: 2/13/18

CERTIFICATE OF SERVICE

Sergeant James Foley, being first duly sworn on oath states that he served copies of the attached upon the below named by depositing same this 13<sup>th</sup> day of February, 2017 in the U.S. Mail Box at 2500 E. Lake Avenue, Glenview, Illinois 60026:

(X) PRIORITY MAIL SIGNATURE CONFIRMATION ( ) FIRST CLASS MAIL

TO: Mr. David M. Stepanich, Esq.  
Law Office of David M. Stepanich  
4017 Old Grand Avenue  
Gurnee, Illinois 60031  
(By Priority Mail Signature Confirmation)

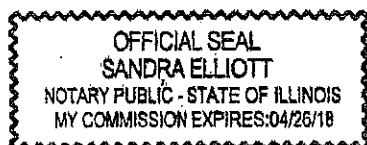
Mr. Paul Denham, Esq.  
Clark Baird Smith LLP  
6133 N. River Road, Suite 1120  
Rosemont, Illinois 60018  
(By Priority Mail Signature Confirmation)

James L. Foley, Secretary

Sgt. James Foley, Secretary  
Glenview Police Pension Board

SUBSCRIBED and SWORN  
to before me this 13<sup>th</sup> day  
of February, 2017.

Sandra Elliott  
NOTARY PUBLIC



15

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

KELLY A. MASTERTON, GUARDIAN OF )  
THE ESTATE OF M. F. MASTERTON, )  
Plaintiff, )  
v. ) NO.  
VILLAGE OF GLENVIEW POLICE PENSION )  
BOARD, and VILLAGE OF GLENVIEW )  
Defendants, )

**PETITION FOR REVIEW OF FINAL ADMINISTRATIVE DECISION**

NOW COMES the Plaintiff, KELLY A. MASTERTON, guardian of the Estate of M. F. Masterton, by and through her attorney, David M. Stepanich, and hereby requests that this Honorable Court review the decision February 14, 2018 of the Glenview Police Pension Fund pursuant to 735 ILCS 5/3-103, and in support thereof states as follows:

1. The Plaintiff is the ex-wife of Officer Owen Masterton, deceased December 6, 2014.
2. The Deceased was an officer with the Glenview Police Department on the date of his death.
3. The Plaintiff and the Decedent were divorced at the time of Officer Masterton's death.
4. The parties had one (1) child, a son, for whose benefit the pension board awarded benefits pursuant to 735 ILCS 5/3-112(a) until he reaches the age of eighteen (18) years old.
5. The child is currently thirteen (13) years old.

6. The Petitioner applied for pension benefits for her son pursuant to 735 ILCS 5/3-112(e), which is a "line of duty" death benefit equivalent to one-hundred percent of the Decedent's salary at the time of his death.

7. This matter was briefed and argued before the GLENVIEW POLICE PENSION BOARD (BOARD) on August 30, 2017.

8. A copy of the board's decision is attached hereto as **Exhibit A**.

9. The BOARD ruled pursuant to that hearing that the minor child was not an eligible recipient of the benefits pursuant to §12(e) of the statute.

10. The VILLAGE OF GLENVIEW (VILLAGE) filed an appearance and was allowed to intervene on behalf of the VILLAGE as a participant in the proceeding.

11. The Petitioner did not object to the VILLAGE being included as a party in the proceeding, and the BOARD ruled that they would be admitted as a party.

12. The BOARD ruled three (3) in favor and two (2) opposed to denying the Petitioner's petition.

### STATEMENT OF FACTS

### JURISDICTION AND VENUE

13. The BOARD formally adopted its decision in its February 2018 meeting, and sent a notice of the decision to the Petitioner's attorney on February 13, 2018. **Exhibit B**

14. This instant petition for review of that administrative hearing is filed in a timely manner within thirty-five (35) days of receipt of that decision as required by 735 ILCS 5/3-103.

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15. The VILLAGE is located in Cook County, Illinois, and the Officer Masterton was a police officer in and for the VILLAGE at the time of his death.

16. The Officer Masterton's death took place in the Glenview Police Department.

17. Officer Masterton resided in Gurnee, Lake County, Illinois, at the time of his death.

18. The sequence of events germane to the determination of this dispute occurred in Cook County, Illinois, and therefore venue in Cook County is appropriate pursuant to 735 ILCS 5/3-104.

19. The hearing on the merits of the petition has still not been held due to the BOARD's determination that they were without the authority to order benefits as requested under §112(e).

20. Therefore, the court needs to review the decision on a jurisdictional basis and should then consider the issue of whether line of duty benefits under §112(e) are appropriate in this cause of action.

### ARGUMENT

#### I

This matter is before the court after a prolonged period of filing, and seeking a remedy as provided for under the administrative code. The main issue revolves around whether the Petitioner, who is the late Officer's son by application of his mother, should be granted increased benefits of one-hundred percent of Officer Masterton's pension at the time of his death, or one-half of the benefits at the time of death based upon the circumstances of his death. For reasons that will be explained below, the BOARD has incorrectly ruled that

the legislature intended that the Petitioner would be unable to receive these benefits. As will be explained, this conclusion is out of step with a clear reading of the statute and an analysis of the intent of what the legislature must have been.

The Petitioner is specifically challenging the BOARD's decision with relation to the effect of language in §3-112(e) reserving benefits to a "surviving spouse". To the extent the other rulings are at issue, the Petitioner agrees with the BOARD's resolution of them. In particular, the Petitioner agrees in principle that the VILLAGE was a necessary party and does not object to their intervening in the present procedure and concurs with the BOARD's ruling thus stating.

Next, the Petitioner agrees with the BOARD's rejection of the VILLAGE's argument that the award of fifty percent benefits was a prior final administrative decision subject to the thirty-five (35) day rule. Clearly, the BOARD reserved the issue and said argument is without merit.

Therefore, it is the Petitioner desire to have this court review the resolution of and the intent of the language of §112(e). The VILLAGE argues that the language of §112(e) only refers to a surviving spouse and that since Officer Masterton was divorced at the time of his death there are no benefits to be disbursed under subsection "e". §3-112(a) provides that: "The surviving spouse shall be entitled to the pension which the police officer was then entitled, and upon the death of the surviving spouse, or upon remarriage of the surviving spouse if that marriage terminates the surviving spouse's eligibility under §3-121." For

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reasons that become clear when one closely reads the statute, the VILLAGE's interpretation of the term surviving spouse seems to be at odds with what is clearly the law.

The BOARD argues that by reference to *In re the Marriage of Hammon* 207 Ill. App. 3d 329 (Ill. App. 2dist 1991) the courts have interpreted a similar measure and clearly opine that the term surviving spouse means only a person who is married to a pensioner and alive at the time of the pensioner's death.

That would seem to be logical interpretation of the effect of the language in the firemen's pension code. Admittedly, language in §3-121 further clarifies a surviving spouse and seems to indicate a spouse married to a pensioner at the time of the pensioner's death. However, it still does not make logical sense for the larger purpose of the intent of the statute. After all, the increased pension benefits are awarded because the pensioner died while performing an act in the line of duty as that term is used in subsection e. There can be no doubt that the legislature wanted to award higher amounts of money based upon the circumstances of the death of the pensioner.

The argument of the beneficiary is punished by not standing in the same position as a surviving spouse produces an absurd result. Under Article III of the Illinois Pension Code governs all matter relating to the police pension fund must be liberally construed in its provisions in favor of police officers and their surviving dependents. *Hahn v. Police Pension Fund of The City of Woodstock* 138 Ill. App.3d 206 (Ill. 1985) In construing the statute, it is the court's duty to enforce the pension law, as enacted, according to the plan and



unmistakable provisions, attaching the popular meaning to the words unless the spirit and purpose of the act dictate otherwise. *Stec v. Oak Park Police Pension Board* 561 N.E.2d 1234 (Ill. App. 1<sup>st</sup> Dist. 1990)

To the extent the BOARD suggest the Petitioner must allege that the term “surviving spouse” includes “dependent child”, which is a misinterpretation of the Petitioner’s argument. The Petitioner is in fact arguing that the term surviving spouse means what it means, and that the legislature intended that the benefits would be paid to a dependent child if there was no surviving spouse. The language of §112(a) defines the order of succession and is part of the same provision §112 and it certainly can be argued that the order of succession is implied but not contained in subsection “e” because it is already in subsection “a”. What the BOARD argues in its brief, and frankly unconvincingly, is that since the language of subsection “e” does not contain the same as subsection “a” that the dependent child is without a remedy.

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The court should understand very clearly what the BOARD is suggesting: That the fact that this police officer died in the line of duty but was not married means that his surviving dependent child, who is under age and presumably is in far greater need of funds for his future having lost his father, is simply out of luck due to the legislature not repeating the same language in subsection “e”. As stated in *Stec* the spirit and purpose of the Act dictate otherwise. How is one to tell a dependent child, who is after all dependent, the fact that his parents are divorced, another difficult fact of the dependent child’s life, that he is

therefore not entitled to the same money that another child would be under the circumstances.

For example, if two (2) police officers were killed in the line of duty both having dependent children, but one having a surviving spouse, the surviving spouse would receive twice as much as the dependent child of the second officer. That cannot possibly be what the legislature intended. The legislature clearly intended that there be an increased monetary award when the pensioner is taken while performing their job. The BOARD's interpretation of that provision, with all due respect, is abysmal and only was adopted after spirited discussion by a vote of three (3) to two (2). This court can remedy that outrageous result and declare that the dependent child is entitled to line of duty benefits.

It can only be presumed that the legislature of this state did not account for this possibility and it was a simple oversight. Again, the increased pension is available when a police officer suffers a heart attack in the line of duty. What the VILLAGE and BOARD are essentially saying is that the circumstances of the pensioner's home life are more important than the needed increase in pension benefits.

The courts role in construing the statute as to ascertain the and effectuate the intent of the legislature. *DeLuna v. Burciaga* 223 Ill. 2d49 (Ill. 2006) If the legislative intent is otherwise clear, courts may read into the statute's language which has been omitted by legislature oversight. *i.d.*

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The Petitioner would welcome the opportunity to develop this argument in a subsequent brief. However, it is clear that the legislature's inclusion of a chain of succession for receipt of benefits in section 112 subsection (a) and the absence of the same succession of beneficiaries in a subsequent subsection of the same section makes no sense. We presume that the legislature did not intend an absurd, inconvenient, or unjust result and the courts may not read into the statutes any exemptions, limitations, or conditions that are contrary to the legislature's intent. *JP Morgan Chase Bank v. Earth Foods* 238 Ill. 2d455 (Ill. 2010) Here we have a situation with an absurd, inconvenient, and profoundly unjust result in that a police officer whose death was a result of line of duty would otherwise have an award of one-hundred percent (100%) of his salary as benefits, and instead is reduced to half of that based upon his status of being divorced. Again, the legislature could not have possibly intended that result and it needs to be remedied. Although substantial deference to an agencies interpretation of a statute is appropriate, the agencies interpretation is not binding on the court and can be rejected if it is erroneous. *Jones v. State* 207 Ill. App. (Ill. App. 5<sup>th</sup> Dist. 160199) Ill. App. 5<sup>th</sup> Dist. 2017

## II

### LINE OF DUTY

The problem with addressing this issue at this juncture, is that it has delayed the resolution from the BOARD of the pivotal issue of whether Officer Masterton's death was "in the line of duty". It is respectfully suggested that this court has the authority to make the determination without remanding the matter back to the BOARD. If the court feels it must be remanded for that determination it is respectfully requested that said remand be expedited,

as the Petitioner is seeking on behalf of her son the line of duty death benefits including all of those that have accrued since the date of his death. In the interim, it has also been determined in this fact situation that benefits available under the Bureau of Justice Assistance with the United States Department of Justice that Officer Masterton's death was in the line of duty. (Exhibit C) The language contained in 34 U.S.C. 10281(k) is controlling in that the duties of Officer Masterton in the twenty-four (24) hours leading to his heart attack clearly show that his death occurred in the line of duty.

A comparison of the language of 34 U.S.C. 10281(k) with 40 ILCS 5/3-114.3 is revealing. 34 U.S.C. 10281(k) states that:

"As determined by the Bureau, a heart attack, stroke, or vascular rupture suffered by a public safety officer shall be presumed to constitute a personal injury within the meaning of subsection (a), sustained in the line of duty by the officer and directly and proximately resulting in death, if –

(1) the public safety officer, while on duty –

(A) engages in a situation involving nonroutine stressful and strenuous physical law enforcement, fire suppression, rescue, hazardous material response, emergency medical services, prison security, disaster relief, or other emergency response activity; or

(B) participates in a training exercise involving nonroutine stressful or strenuous physical activity;

(2) the heart attack, stroke, or vascular rupture commences -

(A) While the officer is engaged or participating as described in paragraph (1);

(B) While the officer remains on that duty after being engaged or participating as described in paragraph (1); or

- (C) Not later than 24 hours after the officer is engaged or participating as described in paragraph (1); and
- (3) the heart attack, stroke, or vascular rupture directly and proximately results in the death of the public safety officer.”

The heart attack provision under the pension code 40 ILCS 5/3-114.3 provides that:

“Any police officer who suffers a heart attack or stroke as a result of the performance and discharge of police duty shall be considered as having been injured in the performance of an act of duty and shall be eligible for the benefits provided under this Article for police officers injured in the performance of an act of duty or, if applicable, the benefits provided in Section 3-114.6.”

The federal provision is more expansive and direct and contains a presumption that the heart attacked was suffered due to stressful factors unless alternative medical evidence is presented. The Illinois Pension Code is capable of reaching the same conclusion as should as Congress has delineated what circumstances result in a line of duty death. For the State of Illinois to be more restrictive and less generous in the awarding of line of duty benefits to needy families who have lost a loved one who happened to be a police officer is undignified and unbecoming of this State and this profession. Further, it is distressing that the VILLAGE OF GLENVIEW by its corporate counsel objected so strenuously to this awarding of benefits. For a police officer who served nearly twenty (20) years and who had been on duty responding to various calls up to the time of his death, to have his only heir shortchanged is out of step with the progressive approach adopted by the United States Congress.

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It is certainly the case that the Department of Justice felt that the circumstances easily demonstrated a line of duty death and this court should adopt the DOJ's findings with regard to Officer Masterton's death and declare that the line of duty benefits available under §112(e) are available due to this being a line of duty death.

### CONCLUSION

This court has the opportunity to review the ruling of the GLENVIEW POLICE PENSION BOARD dated February 13, 2018 which denied the Petitioner the ability to argue that Officer Owen Masterton's death was a result of line of duty due to the fact that there was no beneficiary to receive line of duty benefits. While there does not appear to be a reported case that has directly addressed this issue, and statutory guideline and interpretation dictate that this court try to enact the wishes of the legislature in liberally construing *provisions in favor of police officers and their surviving dependents (Hahn)*. Such a dictate concludes that the GLENVIEW POLICE PENSION BOARD was incorrect in its ruling and it is respectfully requested that this court reverse that ruling and declare the death of Officer Owen Masterton to be a line of duty death and remand the matter for instructions in accord with that ruling.

WHEREFORE, the Plaintiff, KELLY A. MASTERTON, as Guardian of the Estate of M. F. Masterton, respectfully requests that this Honorable Court:

A. Adopt the GLENVIEW POLICE PENSION BOARD's ruling of February 13, 2018 regarding the VILLAGE OF GLENVIEW's motion to intervene, and the reservation of the issue based upon the BOARD's prior language;

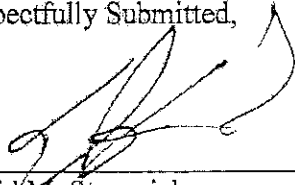
B. Reverse the GLENVIEW POLICE PENSION BOARD's ruling regarding the applicability of line of duty benefits to a beneficiary;

C. Rule that Officer Owen Masterton's death was in the line of duty; and

D. For such other relief as is just in equity.

Respectfully Submitted,

BY:

  
David M. Stepanich

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Prepared by:

Law Offices of DAVID M. STEPANICH

Attorney for: KELLY A. MASTERTON, Guardian of the Estate of M. F. Masterton

Attorney Registration # 6216906

4017 Old Grand Avenue

Gurnee, Illinois 60031

Phone: (847) 406-3900

dms@stepanichlaw.com

Return Date: No return date scheduled  
Hearing Date: No hearing scheduled  
Courtroom Number: No hearing scheduled  
Location: No hearing scheduled

FILED  
9/21/2018 1:51 PM  
DOROTHY BROWN  
CIRCUIT CLERK  
COOK COUNTY, IL  
2018CH03503

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

**KELLY A. MASTERTON,** )  
**Guardian of THE ESTATE OF M.** )  
**F. MASTERTON** )  
**Plaintiff,** )  
  
 )  
**v.** )  
  
 )  
**VILLAGE OF GLENVIEW** )  
**POLICE PENSION BOARD, and** )  
**the VILLAGE OF GLENVIEW,** )  
**Defendants.** )

**No. 2018-CH-03503**

**Calendar 16**

**Judge David B. Atkins**

**ANSWER IN ADMINISTRATIVE REVIEW**

Defendant, Board of Trustees of the Glenview Police Pension Fund, by its attorneys, REIMER & DOBROVOLNY PC, in Answer to the Complaint for Administrative Review pursuant to §5/3-108(b) of the Code of Civil Procedure, files herewith a certified copy of the entire record of public proceedings sought to be reviewed, including the evidence heard, and the findings and decisions made by the Defendant.

REIMER & DOBROVOLNY PC

By: 

Attorneys for Defendant, Village of Glenview  
Police Pension Fund

RICHARD J. REIMER, ESQ.  
REIMER & DOBROVOLNY PC  
15 Spinning Wheel Road, Suite 310  
Hinsdale, Illinois 60521  
(630) 654-9547  
Attorney #39432  
September 21, 2018

SR000168

FILED DATE: 9/21/2018 1:51 PM 2018CH03503



IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

KELLY A. MASTERTON,  
Guardian of THE ESTATE OF M.  
F. MASTERTON

Plaintiff,

v.

VILLAGE OF GLENVIEW  
POLICE PENSION BOARD, and  
the VILLAGE OF GLENVIEW,  
Defendants.

No. 2018-CH-03503

Calendar 16

Judge David B. Atkins

**ORDER**

THIS CASE COMING TO BE HEARD on Defendants'<sup>1</sup> Motion to Dismiss Pursuant to 735 ILCS 5/2-615, the Court having considered the briefs submitted and being fully advised in the premises,

THE COURT HEREBY FINDS AND ORDERS:

1. Defendants in their Motion concede that Plaintiff's Complaint is generally appropriate and seek only to strike the "Argument" portion and Exhibit C thereof;
2. The court declines to strike the "Argument" section of the Complaint. Nothing in 735 ILCS 5/3-108 (governing pleadings in administrative review cases) prohibits inclusion of legal arguments, and their inclusion here does not appear to prejudice Defendants in any way. Defendants' argument under section 3-110 thereof is also unpersuasive, as 3-110 prohibits introduction of new *evidence*, not new arguments;
3. To the extent Plaintiff does improperly attach evidence not in the record below or seek to raise inappropriate arguments, the court cannot determine as much before the Defendants actually file said record for the court's review. Defendants are free to renew their objections when arguing the merits of Plaintiff's petition for review;
4. For these reasons, the Motion is DENIED. Defendants shall answer the Complaint on or before September 24, 2018, and this matter is set for further status to October 4, 2018.

JUDGE DAVID B. ATKINS  
ENTERED:

AUG 24 2018

~~Circuit Court~~-1879  
Judge David B. Atkins

The Court.

---

<sup>1</sup> Defendant Glenview Police Pension Board filed the Motion, which the Village of Glenview joins.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

KELLY A. MASTERTON, GUARDIAN OF  
THE ESTATE OF M. F. MASTERTON,  
Plaintiff,

v.

VILLAGE OF GLENVIEW POLICE PENSION  
BOARD, and VILLAGE OF GLENVIEW  
Defendants,

NO. 18 CH 03503

**NOTICE OF FILING**

**Sent To:**

Richard Reimer, Esq.  
Evan Haim, Esq.  
Reimer, Dobrovolsky & Karlson  
15 Spinning Wheel Road, Suite 310  
Hinsdale, Illinois 60521

Paul Denham, Esq.  
Clark, Baird, Smith  
6133 North River Road, Suite 1120  
Rosemont, Illinois 60018

You are hereby notified that on the October 22, 2018, we filed electronically in the office of the Circuit Clerk, Cook County, Illinois, a Brief in Support of Petition for Review of Final Administrative Decision, a copy of which is attached hereto.

**AFFIDAVIT OF SERVICE**

Undersigned hereby states under penalties of perjury as provided by law pursuant to 735 ILCS 5/1-109 that the above notice and any attached pleadings were ☐ sent via email and/or Facsimile ☐ personally delivered ☒ placed in the mail at Gurnee, Illinois, with first class postage prepaid, and directed to the parties at the address set forth above before 5:00 p.m. on March 19, 2018.

*Lorri Bernardi*

Lorri Bernardi

Prepared by:

The Law Office of David M. Stepanich

Attorney for: KELLY A. MASTERTON, GUARDIAN OF THE ESTATE OF M. F. MASTERTON

Address: 4017 Old Grand Avenue

City: Gurnee, Illinois 60031

Telephone: (847) 406-3900

ARDC #: 6216906

dms@stepanichlaw.com

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

KELLY A. MASTERTON, GUARDIAN OF )  
THE ESTATE OF M. F. MASTERTON, )  
Plaintiff, )  
v. )  
VILLAGE OF GLENVIEW POLICE PENSION )  
BOARD, and VILLAGE OF GLENVIEW )  
Defendants, )

NO. 2018 CH 03503

**BRIEF IN SUPPORT OF PETITION FOR REVIEW OF FINAL  
ADMINISTRATIVE DECISION**

**INTRODUCTION**

This matter involves the review of an administrative decision by the Glenview Police Pension Board executed on February 13, 2018 as a result of the Board's hearing on August 30, 2017. The Glenview Police Pension Board denied a hearing on the merits of a petition for line of duty benefits pursuant to 735 ILCS 5/3-112(a) based on their ruling that they had no jurisdiction to hold a hearing on the merits. The plaintiff has filed a petition to review said decision, and this brief is in support of that petition.

**STATEMENT OF JURISDICTION**

This court is invested with jurisdiction to review the decisions of any administrative agency pursuant to the administrative review provisions of the Code of Civil Procedure (735 ILCS 5/3-102). The petition for review was filed in a timely manner within thirty-five (35) days of the decision as required by 735 ILCS 5/3-103, and this matter involves reviews of the decision of the Glenview Police Pension Board, which is located in Cook County, Illinois. Therefore, jurisdiction of this subject matter is

appropriate in this circuit court pursuant to 735 ILCS 5/3-104, which provides that “an action to review a final administrative decision may be commenced in the Circuit Court of any county in which (1) any part of the hearing or proceeding culminating in the decision of the administrative agency was held”.

### **STATEMENT OF FACTS**

This case arises out of the unfortunate circumstances surrounding the death of Police Officer Owen T. Masterton, who died on December 6, 2014. At the time of his death, Officer Masterton was employed by the Glenview Police Department as a patrol officer and had been so employed for 19 ½ years with the Village of Glenview. Officer Masterton was assigned to patrol duties at the time of his death, and was working a shift which commenced in the early evening hours through the early morning hours.

On December 6, 2014, Officer Masterton had finished a shift of over 14 hours earlier that morning and attended a holiday party given by the Glenview Police Department in the morning and early afternoon. Officer Masterton was joined by his son, Michael who was 12 years old at the time, and by his ex-wife Kelly Masterton, from whom he had recently divorced but maintained a cordial relationship.

After the party ended, Officer Masterton remained at the Glenview Police Department in order to report for his shift. During roll call, at approximately 6:30 p.m., after beginning his shift earlier and returning for roll call, Officer Masterton had a heart-

attack which despite the best efforts of the Glenview Police and Fire Departments was fatal.

The Glenview Police Pension Board authorized a payment of benefits in the immediate aftermath of Officer Masterton's death, and made a preliminary determination on December 8, 2014 that his death was not in the line of duty. **Exhibit A** At the time of Officer Masterton's death, his only surviving heir was his son, Michael. Officer Masterton was divorced and had not remarried at the time of his death, and his ex-wife began preparations to secure a guardian's estate for the receipt of pension funds. The Glenview Police Pension Board unilaterally determined that the pension amount would be fifty percent (50%) of Officer Masterton's salary at the time of his death, and that it would remain in place until Michael turned 18 years of age. Said amount was awarded pursuant to 40 ILCS 5/3-112(c):

“Upon the death of a police officer while in service, having at least 10 but less than 20 years of service, a pension of 1/2 of the salary attached to the rank or ranks held by the officer for one year immediately prior to death shall be payable to the survivors in the sequence provided in subsection (a) of this Section. If death occurs as a result of the performance of duty, the 10 year requirement shall not apply and the pension to survivors shall be payable after any period of service.” (emphasis added)

#### **ISSUE FOR REVIEW**

**Was the Glenview Police Pension Board's written decision interpreting sections 5/3-112(a), (c), (e) and dismissing the application for line of duty benefits due to a lack of jurisdiction erroneous?**

**DISCUSSION**

The Glenview Police Pension Board issued a brief in support of its ruling on February 13, 2018 (the proof of service states February 13, 2017, but clearly this is an error as the decision was issued in 2018). **Exhibit B** The Glenview Police Pension Board determined that the absence of any other language designating beneficiaries other than “surviving spouse” in the line of duty portion of the pension to survivors provision of this statute precluded the applicant who is a minor child, and the only dependent child of the deceased officer, from receiving a full pension benefit of the officer’s full salary at the time of his death. In doing so, the Glenview Police Pension Board unpersuasively and cynically ties itself into knots in order to deprive a minor child of additional funds in order to help him cope with the death of his father four (4) years ago.

The court has the ability to review administrative decisions, and the court may reverse an administrative agency’s decision when it is legally erroneous or factually against the manifest weight of the evidence. *Donnells v. Woodridge Police Pension Board* 159 Ill. App. 3d 735 (Ill. App. 2<sup>nd</sup> Dist. 1987) All parties are in agreement it would seem that the issue for this court is strictly legal as there are no factual issues in dispute in this jurisdictional question. Therefore, the sole question for this court is whether the legal conclusion by the Glenview Police Pension Board was erroneous. For the purposes of

this petition, it clearly was erroneous and this court should reverse the Glenview Police Pension Board's decision.

As has been argued numerous times in the course of this application, the relevant statutory provision is 40 ILCS 5/3-112 "Pension to Survivors", which provides in relevant part under;

**Subsection (a):**

"Upon the death of a police officer entitled to a pension under Section 3-111, the surviving spouse shall be entitled to the pension to which the police officer was then entitled. Upon the death of the surviving spouse, or upon the remarriage of the surviving spouse if that remarriage terminates the surviving spouse's eligibility under Section 3-121, the police officer's unmarried children who are under age 18 or who are dependent because of physical or mental disability shall be entitled to equal shares of such pension. If there is no eligible surviving spouse and no eligible child, the dependent parent or parents of the officer shall be entitled to receive or share such pension until their death or marriage or remarriage after the death of the police officer..."

**Subsection (c):**

Upon the death of a police officer while in service, having at least 10 but less than 20 years of service, a pension of 1/2 of the salary attached to the rank or ranks held by the officer for one year immediately prior to death shall be payable to the survivors in the sequence provided in subsection (a)

of this Section. If death occurs as a result of the performance of duty, the 10 year requirement shall not apply and the pension to *survivors* shall be payable after any period of service... (emphasis added)

**Subsection (e):**

The pension of the surviving spouse of a police officer who dies (i) on or after January 1, 2001, (ii) without having begun to receive either a retirement pension payable under Section 3-111 or a disability pension payable under Section 3-114.1, 3-114.2, 3-114.3, or 3-114.6, and (iii) as a result of sickness, accident, or injury incurred in or resulting from the performance of an act of duty shall not be less than 100% of the salary attached to the rank held by the deceased police officer on the last day of service, notwithstanding any provision in this Article to the contrary.”

The applicant has argued before the administrative agency that the language in subsection (e) of “surviving spouse” is not indicative of the legislative intent to award line of duty benefits to “survivors”. To that extent, the language of subsection (e) is misleading. However, it is made clear with reference to subsection (c) which provides the necessary expansive language.

The BOARD argues that by reference to *In re the Marriage of Hannon* 207 Ill. App. 3d 329 (Ill. App. 2 Dist. 1991) the courts have interpreted a similar measure and clearly opine that the term surviving spouse means only a person who is married to a pensioner and alive at the time of the pensioner’s death. In doing so, the Glenview Police



Pension Board relies on an argument which is uncontested: The applicant is not claiming that there was a “surviving spouse” of Officer Masterton at the time of his death. The Glenview Police Pension Board’s assertion that “the applicant must assert the language surviving spouse includes a dependent child” (page 11 Glenview Police Pension Board decision and order) is incorrect. The applicant is claiming nothing of the sort, and specifically arguing that the language in subsection (e) adopts the sequence of beneficiaries provided in subsection (a) by reference.

The Village of Glenview and the Glenview Police Pension Board have placed their reliance on a divorce case, which is more concerned with the allocation of marital property under 750 ILCS 5/503, rather than the actual issue before this court. In doing so, the Village of Glenview and the Glenview Police Pension Board attempt to mislead this court by couching this current dispute in terms of whether there was a “surviving spouse”. As the applicant has repeatedly pointed out, it is conceded that there is no surviving spouse and the Glenview Police Pension Board’s assertion that surviving spouse does not include dependents is ridiculous.

The argument advanced by the Glenview Police Pension Board and the Village of Glenview for denying benefits to the applicant based on their interpretation of the language in subsection (e) completely ignores the title of the section, the language in subsection (c), and produces a few absurd results. Under Article III of the Illinois Pension Code governs all matter relating to the police pension fund must be liberally construed in its provisions in favor of police officers and their surviving dependents.

*Hahn v. Police Pension Fund of The City of Woodstock* 138 Ill. App.3d 206 (Ill. 1985)

In construing the statute, it is the court's duty to enforce the pension law, as enacted, according to the plan and unmistakable provisions, attaching the popular meaning to the words unless the spirit and purpose of the act dictate otherwise. *Stec v. Oak Park Police Pension Board* 561 N.E.2d 1234 (Ill. App. 1<sup>st</sup> Dist. 1990)

The pension code, it must be conceded by all of the parties herein, provides in subsection (a) an order of succession as to the recipient of survivor benefits. We presume that the legislature did not intend an absurd, inconvenient, or unjust result and the courts may not read into the statutes any exemptions, limitations, or conditions that are contrary to the legislature's intent. *JP Morgan Chase Bank v. Earth Foods* 238 Ill. 2d 455 (Ill. 2010)

The Glenview Police Pension Board's finding and conclusion, page 13 paragraph 4, states that "Under §5/3-112(e) of the Pensions Code, the Applicant, a dependent child, does not qualify as a surviving spouse". This is a misinterpretation of the statute, when the language of the statute is clear in subsection (a) which sets the beneficiaries, and by no means is a dependent child considered as a surviving spouse. As stated earlier, the Glenview Police Pension Board ties itself into knots making this logical fallacy, when the language of the statute is clear in subsection (a) which sets out a sequence of beneficiaries. §5/3-112(a) states that "the police officer's unmarried children who are under age 18 or who are dependent because of physical or mental disability shall be

entitled to equal shares of such pension.” There is no language that suggests otherwise and the Glenview Police Pension Board’s confusion is profound.

This interpretation of the code produces at least 2 absurd results: (1) The 2 police officers similarly situated who die in the line of duty, but 1 has a surviving spouse and the other does not, have different outcomes. The police officer with a “surviving spouse” would receive 100% pension, while a police officer without a “surviving spouse” but with dependent children would have those dependent children receive a 50% pension as is the case here. (2) Base upon the Glenview Police Pension Board’s reasoning, and ignorance of the statutes language ins §5/3-112(c) which states “If death occurs as a result of the performance of duty, the 10 year requirement shall not apply and the pension to survivors shall be payable after any period of service.” Under the Glenview Police Pension Board’s analysis, a police officer with less than 10 years of service who died in the line of duty would receive a 100% pension, while a police officer with over 10 years of service like Officer Masterton, and his 19 ½ years of service, would receive a 50% pension. Those are absurd results which could not have been intended by the legislature.

It is clear that the Glenview Police Pension Board does not even understand the code it is interpreting. The section itself is entitled “Pension to Survivors” (“survivors” is a more expansive term than “surviving spouse”). Further, it is clear that the legislature has contemplated that a class of persons identified as survivors would obtain line of duty benefits in subsection (c). The legislature has clearly stated that line of duty benefits are payable to survivors, not just a surviving spouse. One cannot then argue that the only

potential beneficiary is a surviving spouse under subsection (e) as it clearly states in subsection (c) “**survivors**”.

The legislature’s intent in enacting the statute can certainly be divined as desiring that a surviving spouse and then dependent children should receive benefits in the case of a non-line of duty death pension. It is certainly clear from the statute that the legislature intended increased benefits to be awarded in the case of a line of duty death. The same provision, subsection (c) of the code which provides for a 50% pension in the case of the death of an officer without reference to line of duty, also contains reference to line of duty in the event a line of duty death is suffered by a police officer with less than 10 years of service. The statute specifically states that in that case the line of duty benefits, which are after all those that are available pursuant to subsection (e), are payable to “survivors... after any period of service.

As discussed above, the Glenview Police Pension Board’s interpretation produces absurd results as it punishes police officers pension beneficiaries if a police officer has more than 10 years of service, and if he or she is unmarried. The Glenview Police Pension Board also wants the court to ignore the language in §5/3-112(c), and interpret §5/3-112(e) in a vacuum. Although substantial deference to an agency’s interpretation of a statute is appropriate, the agency’s interpretation is not binding on the court and can be rejected if it is erroneous. *Jones v. State* 207 Ill. App. (Ill. App. 5<sup>th</sup> Dist. 160199) Ill. App. 5<sup>th</sup> Dist. 2017 Here, the agency has interpreted the statute erroneously and the decision must be reversed.

Here, the minor child is clearly a “survivor” under the provisions of subsection (a). He is a “survivor” under subsection (c) if line of duty benefits are available and his father had been employed as a police officer for less than 10 years. However, according to the Glenview Police Pension Board he is not a “survivor” when he had worked for 19 ½ years as a police officer and may be entitled to line of duty benefits simply because the legislature did not include the term “survivor” in subsection (e). It was clearly a legislative oversight in the template of succession of benefits in subsection (a) should control.

It should not go without noting that as the Glenview Police Pension Board continues to attempt to put up roadblocks to deprive a minor child of benefits to which he may be entitled while he is still a minor, time is being lost and he is harmed by not having the additional funds available. As previously argued, it would certainly create an unjust result as had Officer Masterton been married at the time, there is no doubt his spouse could have applied for line of duty benefits. Since Officer Masterton was not married at the time of his death, the Glenview Police Pension Board would preclude a minor child from asking for the same benefits that a surviving spouse would have been entitled to. Nothing in the statute would dictate that that would be an appropriate result. In fact, the legislature’s reference to “survivors” and line of duty benefits should be controlling and demolish the Glenview Police Pension Board’s cynical and specious argument.

### **CONCLUSION**

For the reasons stated above, it is respectfully requested that this honorable court rule that the Glenview Police Pension Board's ruling of February 13, 2018 is legally erroneous, and reverse the Board's decision. The court should then direct the Glenview Police Pension Board to schedule a hearing for the applicant in an accelerated time frame on the issue of eligibility for line of duty benefits.

Respectfully Submitted,

BY: *David M. Stepanich*  
David M. Stepanich

Prepared by:  
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COPY

**SPOUSAL SURVIVOR PENSION BENEFIT (TIER 1) - Information Request Form**

In order to complete the Benefit Calculation Worksheet, please provide the following information:

Pension Fund Name:		Village of Glenview Police Pension Fund		
Member Name:		Owen T. Masterton		
Date of Death:		December 6, 2014		
Member's Status at Time of Death:		If Member was Active at Time of Death:		
<input checked="" type="checkbox"/> Active - died off duty <u>X</u>		(Please provide annual amount)		
<input type="checkbox"/> Active - died in line of duty		Base Salary \$94,880.30		
<input type="checkbox"/> Deferred Retiree		Longevity 1,660.62		
<input type="checkbox"/> Retired		Education*		
<input type="checkbox"/> Nonduty Disability		Holiday*		
<input type="checkbox"/> Duty Disability*		Other (list type):*		
<input type="checkbox"/> Occupational Disease Disability*		TOTAL: \$96,540.92		
At work - not "line of duty"		* If pensionable		
* If Duty Disability or Occupational Disease Disability, was cause of death a result of the disability? Y / <u>N</u>				
<b>SPOUSAL INFORMATION</b>				
Spouse's Name:		N/A		
Date of Marriage:				
Home Address: # & Street				
City, State, Zip				
Daytime Phone: ( )		Email Address:		
Date of Birth:		Soc Sec Number:		
<b>DEPENDENT INFORMATION</b>				
	Name	Date of Birth	Social Security #	Handicapped? Circle Y/N
Dependent *	Michael F. Masterton			Y / <u>N</u>
Dependent *				Y / N
Dependent *				Y / N
Dependent *				Y / N
Dependent *				Y / N
Dependent *				Y / N
* List dependent if under age 18 or legally physically or mentally handicapped				
By signing below, I certify that the information above is accurate to the best of my knowledge:				
Signature of Pension Fund Board Trustee:		James S. Foley		Date: 12/08/2014

\* We strongly recommend that the Pension Board ask the Survivor to complete and submit an Application

Phone (630) 393-1483

EXHIBIT

A

BR000183

**BEFORE THE BOARD OF TRUSTEES OF THE  
GLENVIEW POLICE PENSION FUND**

**IN THE MATTER OF THE SURVIVING )  
DEPENDENT CHILDREN'S BENEFIT OF: )**

**OFFICER MASTERTON, )**

**APPLICANT, )**

**AND, )**

**VILLAGE OF GLENVIEW, )**

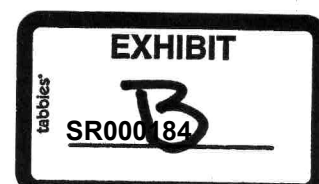
**INTERVENOR. )**

**DECISION AND ORDER**

The Board of Trustees of the Glenview Police Pension Fund (hereinafter "Pension Board"), pursuant to the statutory authority set forth in 40 ILCS §5/3-101 *et seq.* of the Illinois Pension Code, renders the following decision concerning the application brought on behalf of the surviving dependent child of deceased police officer Owen Masterton (hereinafter the "Applicant") for line of duty survivor benefits under §5/3-112(e) of the Illinois Pension Code.

A hearing was held before the Board on August 30, 2017. The purpose of this hearing was to determine whether or not the Village of Glenview's Motion to Intervene should be granted, whether the Village of Glenview's Motion to Dismiss for lack of jurisdiction should be granted, and whether or not the Glenview Police Pension Board had jurisdiction to award a dependent child a "line of duty survivor" benefit under §5/3-112(e) of the Illinois Pension Code.

The Applicant was represented by legal counsel David M. Stepanich, and the Village of Glenview, as Intervenor, was represented by attorney Paul. A. Denham. The parties received proper notice of the hearing, of their right to be represented by legal counsel, their right to present evidence, their right to challenge any evidence, and to make arguments. No decision on the merits





of the underlying claim was heard. In other words, no determination was made as to whether Officer Masterton's death was from "performance of an act of duty."

The testimony of any witnesses and arguments of the parties, along with the documentation admitted into the administrative record was considered by the Pension Board. To the extent that any evidence, arguments, findings and/or conclusions submitted by the parties are in accordance with the findings, conclusions, and views stated herein, have been accepted, and to the extent that they are inconsistent therewith, they are rejected.

I.

**STATEMENT OF FACTS**

Based upon a preponderance of the evidence in the record, the Pension Board makes the following findings of fact.

1. On December 6, 2014, Glenview Police Officer and participant of the Glenview Police Pension Fund, Owen Masterton, suffered a fatal heart attack. (Bd. Ex. C p. 2)

2. At the time of his death, Officer Masterton was divorced, had not remarried, and left a surviving 10 year-old son with his ex-wife Kelly. (Bd. Ex. C. p. 2) At the time of his death, Officer Masterton was still in service as a police officer and had 19 full years of creditable service (Bd. Ex. F)

3. On January 2, 2015, attorney Craig S. Mielke sent an email to Richard J. Reimer, the attorney for the Glenview Police Pension Board, questioning whether or not the Pension Board could commence payment of the "undisputed" fifty percent (50%) non-duty pension (sic) to the dependent son, and whether or not Officer Masterton's ex-spouse was required to fill out an application, while the coroner/medical examiner was determining the cause of Officer Masterton's death. (Bd. Ex. C, attachment B)

4. Mr. Reimer responded to Mr. Mielke, that the Pension Board could commence payment to a dependent child on an interim basis without any prejudice to any line of duty survivor claim. Mr. Mielke was further advised that upon a review of §5/3-112(e), it was not clear whether a dependent child would be entitled to a line of duty survivor benefit. (Bd. Ex. C, attachment B)

5. On February 16, 2015, Pension Board President Sgt. Foley, wrote the Pension Board's accountant that, "after speaking with Reimer" the Board wanted to approve the fifty percent (50%) pension "without prejudice." (Bd. Ex. B, attachment C)

6. The Pension Board met on February 18, 2015. The minutes from this meeting reflect that the Board voted to grant survivorship benefits to Officer Masterson's son, until he turns eighteen (18), and the benefits were granted "without prejudice" and "pending attorney approval." (Bd. Ex. B, attachment D)

7. On February 3, 2017, attorney David M. Stepanich filed a request that the Pension Board "review its determination to award a fifty percent (50%) pension to survivors under 40 ILCS §5/3-112(c), and award a pension subsequent to 40 ILCS §5/3-114.1(a) (sic). (Bd. Ex. A)

8. On or about April 3, 2017, the Village of Glenview filed its Motion to Intervene. (Bd. Ex. B)

9. Without leave, and before the Pension Board convened to consider the Motion, the Village of Glenview filed its "Brief to Supplement its Motion to Intervene." (Bd. Ex. C)

10. On April 20, 2017, the Pension Board met to discuss the above referenced matter. The Pension Board passed a motion appointing the RDK law firm to serve as a hearing officer during the pendency of the Masterton matter, and authorized its law firm to administer all pre-hearing and administrative matters, including but not limited to coordinating pre-hearing briefing and scheduling of hearings. (Bd. Ex. B)

11. The Pension Board also voted to inform the parties that the Pension Board would hear arguments and evidence related to the Village's Motion to Intervene, and whether or not the Pension Board had jurisdiction over this matter. (Bd. Ex. B)

12. A briefing schedule was set, directing the Applicant to file a written objection, if any, to the Village's Motion to Intervene, and directing the Village to file a reply, at which time, the Pension Board would set this matter for hearing on the outstanding issues. (Bd. Ex. B, p. 1-2)

13. On or about May 23, 2017, the Applicant filed its written response. (Bd. Ex. E)

14. In an undated memo captioned "Response to the Village of Glenview's Memorandum" the Applicant responded to arguments concerning the "jurisdiction" of the Pension Board. (Bd. Ex. F)

15. A hearing was held on all outstanding issues, except the merits of the underlying claim, meaning whether or not Officer Masterton died as a result of an "act of duty" on August 30, 2017. The Pension Board admitted without objection Board Exhibits A through G. (Tr. 8)<sup>1</sup>

## II.

### STATUTORY PROVISIONS

The following statutory provisions are relevant to this matter and provide in pertinent part,

#### § 3-112. Pension to Survivors.

(a) Upon the death of a police officer entitled to a pension under Section 3-111, the surviving spouse shall be entitled to the pension to which the police officer was then entitled. Upon the death of the surviving spouse, or upon the remarriage of the surviving spouse if that remarriage terminates the surviving spouse's eligibility under Section 3-121, the police officer's unmarried children who are under age 18 or who are dependent because of physical or mental disability shall be entitled to equal shares of such pension. If there is no eligible surviving spouse and no eligible child, the dependent parent or parents of the officer shall be entitled to receive or share such pension until their death or marriage or remarriage after the death of the police officer.

<sup>1</sup> References are to the relevant pages of the transcript of the August 30, 2017 hearing before the Pension Board.

(e) The pension of the surviving spouse of a police officer who dies (i) on or after January 1, 2001, (ii) without having begun to receive either a retirement pension payable under Section 3-111 or a disability pension payable under Section 3-114.1, 3-114.2, 3-114.3, or 3-114.6, and (iii) as a result of sickness, accident, or injury incurred in or resulting from the performance of an act of duty shall not be less than 100% of the salary attached to the rank held by the deceased police officer on the last day of service, notwithstanding any provision in this Article to the contrary.

735 ILCS §5/3-101 Definitions (in pertinent part)

"Administrative decision" or "decision" means any decision, order or determination of any administrative agency rendered in a particular case, which affects the legal rights, duties or privileges of parties and which terminates the proceedings before the administrative agency.

### III.

#### ANALYSIS

The Pension Board shall address each of the three outstanding issues before the Board. First, whether the Village's Motion to Intervene should be granted? Second, whether the Glenview Police Pension Board has jurisdiction over this matter? Third, whether a surviving dependent child is entitled to or eligible for "line of duty" survivor benefits under §5/3-112(c) of the Illinois Pension Code?

#### A. Village's Motion To Intervene

In its Motion to Intervene, the Village raises the following arguments in support of its intervention. Intervention should be granted to protect the Village's due process rights, and the Village met the requirements for intervention under Illinois case law. In addition, the Village makes an offer of proof as to additional evidence that it would offer at the hearing on the merits of the claim. (Village Petition to Intervene, Bd. Ex. 3-7) In his May 23, 2017 correspondence to the Board, Attorney Stepanich indicates that he was not objecting to the Village's Petition to Intervene. (Bd. Ex. E p. 1)

A municipality, such as the Village, does not have a statutory right to intervene. Rather, the Pension Board has discretion to allow a municipality to intervene in disability proceedings,

and the discretion must be exercised with care, and cannot be abused. *The Village of Stickney v. Board of Trustees of the Police Pension Fund of the Village of Stickney*, 347 Ill.App.3d 845, 852 (1st Dist. 2004). Whether the Board's decision to permit a municipality's petition to intervene is a close question and there is little case law for guidance. *Williams v. Board of Trustees of the Morton Grove Firefighters Pension Fund*, 398 Ill.App.3d 680, 689. Citing *Stickney*, cited *supra*, the court stated:

"A village's request to cross examine a pension applicant and its desire to create a full administrative record, without more, was not sufficient to support the Village's request to participate in the administrative hearing. 389 Ill.App.3d 689.

The court further states as follows:

"However, protecting a municipalities interest in the proper expenditure of funds, may be a sufficient basis for permitting intervention when combined with another interest." *Id.*

Exactly what constitutes the "another interest," as contemplated by the court in *Williams* is not clear. The Village argues that the Illinois Supreme Court's decision in *Vernon Hills v. Healon*, 2015 IL 118170 (September 24, 2015), established that interest.

In *Healon*, the Supreme Court rejected a municipality's procedural due process claim concerning an officer's potential claim for paid health insurance benefits under the Public Safety Employee Benefits Act ("PSEBA"), pursuant to 820 ILCS §320 *et seq.* The court held that if a municipality fails to protect its rights by seeking to intervene in an underlying disability hearing before the police pension board, it cannot later contest the basis for an award of disability benefits. *Healon*, 215 IL 118170.

When questioned at the hearing, the Applicant conceded there was a possibility that PSEBA benefits would be sought in the event that the Pension Board were to award a line of duty survivor benefit to the Applicant. (Tr. 11-12). In addition, Officer Masterton's estate has a pending claim for benefits in the court of claims for line of duty compensation pursuant to 815

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ILCS §315/1 *et seq.* (Bd. Ex. A)

Recently, the Appellate Court answered the question as to whether or not potential PSEBA liability was a sufficient “interest,” mandating intervention into a police pension board proceeding. *Village of Alsip v. Portincaso*, 217 Ill.App. (1st), 153167 (2017). In that case, the pension board denied a village’s motion to intervene. The trial court reversed, and the appellate court affirmed holding that the pension board abused its discretion by failing to allow the village to intervene. The court held that the village’s stated interest in the proper expenditure of funds, and its potential liability for PSEBA benefits, were legitimate interests warranting intervention into the police pension board proceedings. *Id.*

Based on the foregoing, the majority of the Pension Board voted unanimously to grant the Village’s Motion to Intervene, finding that the Village had established a sufficient interest warranting the Village’s intervention. (Tr. p. 25-26)

**B. Jurisdiction – Whether the Pension Board’s Payment of Dependent Children’s Survivor Benefits on an Interim Basis, Without Prejudice, Constituted a Final Administrative Decision?**

The second issue before the Board is whether the Board has jurisdiction over the matter when it commenced payments to the dependent son of Officer Masterton, in June of 2015? Prior to being granted leave to intervene in this matter, the Village raised this issue in its “Brief Supplementing its Motion to Intervene.” (Bd. Ex. C, p. 5-7) As Applicant correctly points out in his “Response to the Village of Glenview’s Memorandum,” the evidence before the Board established that the minutes of the February 18, 2015 Pension Board meeting indicated that payments to Officer Masterton’s dependent son would be paid “without prejudice.” (Bd. Ex. F, Attachment B) In fact, the January 5, 2015 email to Attorney Craig Mielke, indicated that the intention of the Pension Board was to commence payments to the dependent child on an “interim basis without prejudice” to any line of duty survivor claim that might ultimately be filed. (Bd. Ex.

F, Attachment A, p. 1)

Thus, the issue raised by the Village is whether or not the Board, in making those “dependent children’s payments on an interim basis and without prejudice” constituted a “final administrative decision,” within the meaning of 735 ILCS §5/3-103 of the Code of Civil Procedure? The Pension Board finds the Village’s argument on this matter completely without merit.

Courts have held that a “final administrative decision” usually follows from the following:

1. Some type of application, i.e., retirement, disability, survivor or refund; 2. An adversarial process involving the parties affected; 3. A hearing on controverted facts. 4. An ultimate disposition rendered by an impartial fact finder, 5. The Board informs the applicant or party affected in writing of its actions. *Fields v. Schaumburg Firefighters’ Pension Board*, 383 Ill.App.3d 209, 889 N.E.2d 1167 (1st Dist. 2008); *Key Outdoor Inc. v. Department of Transportation*, 322 Ill.App.3d 316, 750 N.E.2d 709 (1st Dist. 2001)

The Illinois Supreme Court recently held that an administrative agency’s failure to properly inform plaintiff of the 35-day limitation period running from the date it was placed in the mail as opposed to the date it was received by the party, or failure to advise of the mailing date, constituted a violation of plaintiff’s due process rights. *Grimm v. Calica*, 2017 IL 120105

In the present case, it is clear that the mere payment of dependent children’s benefits on an “interim, without prejudicial basis,” was not a “final administrative decision” concerning the matters before this Pension Board. The Village first overlooks the fact that it had not yet been made a “party” to the proceeding, meaning, that it had not yet been granted leave to intervene, when it raised the question of jurisdiction. Second, the Village overlooks the definition of “final administrative decision” contained in the “Administrative Review Act.” Section 5/3-101 defines “administrative decision” as follows:

"Administrative decision" or "decision" means any decision, order or determination of any administrative agency rendered in a particular case, which affects the legal rights, duties or privileges of parties and which terminates the proceedings before the administrative agency. [emphasis added]

Clearly, the payment of benefits on an interim basis, without prejudice did not "terminate the proceedings before the Pension Board." Finally, the Applicant was not placed on notice that the "interim" decision was final and subject to administrative review. Under the Illinois Supreme Court's decision in *Grimm*, might very well have violated Applicant's due process rights.

Consequently, the Pension Board voted unanimously to deny the Village's "Motion to Dismiss," based on its argument that the Pension Board lost jurisdiction by commencement of the payment of those benefits. (Tr. 40-41).

**C. Whether §5/3-112(e) of the Pension Code Provides for Payment to a Police Officer's Dependent Son?**

The next issue before the Pension Board is whether or not §5/3-112(e) of the Illinois Pension Code, providing for line of duty death benefits to the "surviving spouse" of a police officer, would include dependent children's benefit, when there is no surviving spouse? It is without dispute that under 40 ILCS §5/3-112(a) of the Illinois Pension Code, if a police officer is entitled to benefits under 3-111 of the Pension Code dies without a surviving spouse, the officer's unmarried children under the age of eighteen (18) are entitled to benefits. What is unclear, is whether under §5/3-112(e) of the Pension Code, which provides line of duty death benefits to the surviving spouse of a police officer would apply to a dependent child? This is a case of first impression.

In its Brief Supplementing its Motion to Intervene, the Village of Glenview argues that line of duty surviving spouse benefits can only be awarded to a "surviving spouse." (Bd. Ex. C p.



4-5) The Applicant argues that the Village of Glenview's construction of §5/3-112(e) of the Pension Code would violate the spirit and intent of the Pension Code and be inconsistent with the language of the same statute. The Applicant argues that the "liberal construction" principle should favor the Applicant. (Bd. Ex. F p. 5-6)

"The cardinal rule of statutory construction, to which all other canons and rules are subordinate, is to ascertain and give effect to the intent of the legislature." *Wade v. City of North Chicago Police Pension Bd.*, 226 Ill.2d 485, 509 (2007). "Although a court should first consider the language of the statute, a court must presume that the legislature, in enacting the statute, did not intend absurdity or injustice." *Id.* at 510.

Under the Illinois Pension Code, "surviving spouse" has a definite and defined meaning. In *In re Marriage of Hannon*, 207 Ill.App.3d 329, 333 (2d Dist. 1991), a firefighter's former spouse asserted that section 4-114 of the Pension Code included former spouse within the meaning of "surviving spouse." She also argued that the firefighters' pension code did not define "surviving spouse" and that the pension statute must be construed to favor the rights of beneficiaries. *Id.*

The Court rejected the former spouse's assertion. Instead, the Court explained, "As the Fund correctly notes, an unambiguous statute shall be construed consistent with the ordinary and popularly understood meanings of its words." *Id.* The Court further reasoned, "Given the fact, and the absence of any contrary suggestion in the legislative language, we find inescapably clear that section 4-114(a)'s reference to a 'surviving spouse' includes *only* a person who is married to a pensioner and alive at the time of the pensioner's death. A former spouse, having had his marital relationship severed by dissolution, is not included in that designation." *Id.* (Emphasis added).

Here, the legislative history regarding Section 5/3-112(e) is silent regarding the meaning of "surviving spouse." Nonetheless, the firefighters' pension code is analogous to the police

officers' pension code and can be used to define the meaning and contours of the code. Furthermore, it is proper to compare separate statutes addressing the same subject to ascertain legislative intent. *Illinois-Indiana Cable Television Association v. Illinois Commerce Comm'n*, 55 Ill.2d 205, 220 (1973). However, the language used in a statute is the primary source for determining the legislature's intent and where the language is certain and unambiguous, the court's role is to enforce the statute as enacted. *People ex. Rel. Gibson v. Cannon*, 65 Ill.2d 366, 369 (1976).

In the present matter, Officer Masterton passed away with 19 years of creditable service. At the moment of his untimely death, the Mastertons were divorced, and his former spouse, Kelly Masterton, was not entitled to any pension benefit. The Pension Board correctly considered and awarded benefits under Section 5/3-112(a) of the Pension Code, which provided a mechanism for a dependent child to receive a pension benefit.

Nevertheless, to succeed in his claim under Section 5/3-112(e), the Applicant must assert the language "surviving spouse" includes a "dependent child." Section 5/3-112(e) is devoid of any reference to a "dependent child" or any similar identifiable beneficiary. In *Hannon*, the Court refused to expand the meaning of "surviving spouse" beyond its normal everyday meaning. Similarly, in the instant matter, the Pension Board declines to expand the meaning of "surviving spouse" to include a "dependent child." Section 5/3-112(e) contains plain and unambiguous language that only identifies a "surviving spouse" as a beneficiary. Nothing in this particular subsection of the Pension Code designates an alternate beneficiary. Furthermore, because the Pension Code does contemplate a "dependent child" in other sections of the code, the Pension Board should draw meaning and effect from its absence in Section 5/3-112(e).

Finally, the legislature established the pension benefit at issue and may therefore define to whom the pension intends to benefit. See *Hannon*, Ill.App.3d at 336 (“The pension code may exclude, as it has excluded, a ‘former spouse’ from its definition of ‘surviving spouse’.”) While it is true that the Pension Code should be construed liberally, the presumption is overcome in this instance because the pension benefit is plainly stated in §5/1-112(e), and courts have clearly defined the meaning of “surviving spouse” within the Pension Code. The Applicant, a dependent child, does not qualify as a “surviving spouse” because he is not a person who was married to a pensioner at the time of the pensioner’s death.

Accordingly, a majority of the Pension Board, three of five Trustees, voted to dismiss this matter. Two of the Trustees dissented.

#### IV.

#### CONCLUSIONS

1. The Pension Board’s jurisdiction has subject matter jurisdiction over the Application for Dependent Children’s Benefits Under §5/3-112(a);
2. The Village of Glenview has established a sufficient interest in the proceedings before this Pension Board justifying its participation as a party to these proceedings, and its Motion is Granted.
3. The Pension Board did not deprive itself of jurisdiction when it commenced payments to the dependent child under §5/3-112(a) of the Illinois Pension Code, on an interim basis and without prejudice, because payment of benefits did not constitute a “final administrative decision” within the meaning of 735 ILCS §5/3-101 of the Code of Civil Procedure, as it did not terminate the proceedings before the Pension Board;

4. Under §5/3-112(e) of the Pension Code, the Applicant, a dependent child, does not qualify as a "surviving spouse."


**IT IS THEREFORE ORDERED:**


A. For the reasons set forth herein, the Applicant's application for line of duty dependent children's benefits is dismissed under §5/3-112(e) of the Pension Code because he is not a "surviving spouse" as required under that provision.

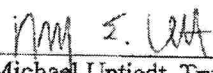
B. Pursuant to §5/3-112(a) of the Illinois Pension Code, the dependent children's benefit, awarded on an interim basis, is final and payable until such time as the Applicant attains eighteen (18) years of age.

THE BOARD OF TRUSTEES OF THE GLENVIEW  
POLICE PENSION BOARD

BY A MAJORITY OF THE PENSION BOARD  
TRUSTEES

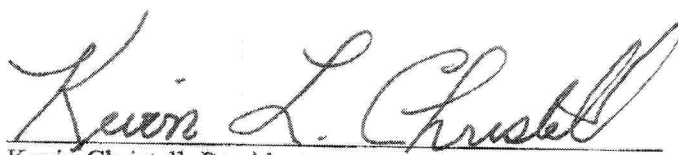
  
George Colis, Trustee


  
Robert Francois, Trustee

  
Michael Untiedt, Trustee

DISSENT:

Trustees Kevin Christell, President, and James Foley, Secretary, voted "no" to the Motion to Dismiss. Trustees Christell and Foley believe that liberal construction of the Statute cause them to conclude that the term "surviving spouse" as it is used in §5/3-112(e) of the Illinois Pension Code would include a "dependent child" for purposes of the line of duty death benefits created under this provision. Trustees Christell and Foley believe that a hearing on the merits of the claim should have been held to determine whether or not Officer Masterton died as a result of an "act of duty" within the meaning of §5/3-112(e) of the Illinois Pension Code. Trustee Christell further believes that the language in §5/3-112 (e) not referencing "dependent children" was a legislative oversight and resulted in an injustice.

  
Kevin Christell, President

  
James Foley, Secretary

**THIS IS A FINAL AND APPEALABLE DECISION. THIS DECISION CAN BE REVIEWED IN THE CIRCUIT COURT BY FILING A COMPLAINT FOR ADMINISTRATIVE REVIEW WITHIN 35 DAYS FROM THE DATE THAT A COPY OF THIS DECISION WAS SERVED UPON THE PARTY AFFECTED THEREBY. THE AFFECTED PARTY MUST FILE A COMPLAINT FOR ADMINISTRATIVE REVIEW WITHIN 35 DAYS FROM THE MAILING DATE OF THIS DECISION.**

BEFORE THE BOARD OF TRUSTEES OF THE  
GLENVIEW POLICE PENSION FUND

IN THE MATTER OF THE SURVIVING )  
DEPENDENT CHILDREN'S BENEFIT OF: )

OFFICER MASTERTON, )

APPLICANT, )

AND, )

VILLAGE OF GLENVIEW, )

INTERVENOR. )

CERTIFICATE OF PAYMENT

Pursuant to Section 5/3-133 and Section 5/3-112(a) of the Illinois Pension Code, this is to certify that the Applicant, Michael F. Masterton, a minor, is entitled to payment of a dependent children survivor's benefit, based upon 50% of Officer Masterton's salary at the time of his death, until Applicant attains 18 years of age or until further order of the Pension Board. The amount of the benefit has been certified by the Treasurer of the Village in accordance with 40 ILCS §5/3-141.1.

GLENVIEW POLICE PENSION BOARD

By:



PRESIDENT



SECRETARY



TREASURER, VILLAGE OF GLENVIEW

DATE: 2/13/18

**CERTIFICATE OF SERVICE**

Sergeant James Foley, being first duly sworn on oath states that he served copies of the attached upon the below named by depositing same this 13<sup>th</sup> day of February, 2017 in the U.S. Mail Box at 2500 E. Lake Avenue, Glenview, Illinois 60026:

(X) PRIORITY MAIL SIGNATURE CONFIRMATION ( ) FIRST CLASS MAIL

TO: Mr. David M. Stepanich, Esq.  
Law Office of David M. Stepanich  
4017 Old Grand Avenue  
Gurnee, Illinois 60031  
*(By Priority Mail Signature Confirmation)*

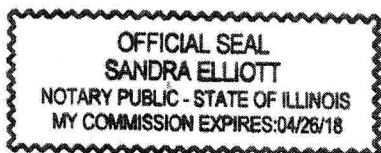
Mr. Paul Denham, Esq.  
Clark Baird Smith LLP  
6133 N. River Road, Suite 1120  
Rosemont, Illinois 60018  
*(By Priority Mail Signature Confirmation)*

James L. Foley, Secretary

Sgt. James Foley, Secretary  
Glenview Police Pension Board

SUBSCRIBED and SWORN  
to before me this 13<sup>th</sup> day  
of February, 2017.

Sandra Elliott  
NOTARY PUBLIC



**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

KELLY A. MASTERTON, GUARDIAN OF )  
THE ESTATE OF M.F. MASTERTON )  
 )  
Plaintiffs, )  
 )  
v. ) Case No. 2018-CH-03503  
 )  
VILLAGE OF GLENVIEW POLICE )  
PENSION BOARD, and VILLAGE OF )  
GLENVIEW )  
Defendant. )

**DEFENDANT VILLAGE OF GLENVIEW’S RESPONSE BRIEF  
IN OPPOSITION TO THE COMPLAINT FOR ADMINISTRATIVE REVIEW**

NOW COMES the Defendant, VILLAGE OF GLENVIEW (the “Village”), by and through its counsel, Clark Baird Smith LLP, to respectfully request that this Court deny and dismiss Plaintiff Kelly Masterton’s (“Plaintiff’s”) Complaint for Administrative Review.

**INTRODUCTION**

This litigation is related to a February 13, 2018, decision of the Co-Defendant Board of Trustees of the Glenview Police Pension Fund (the “Pension Board”), which properly refused to reopen and reconsider the terms of Plaintiff’s survivorship annuity. For the following reasons, there is no jurisdictional basis to allow Plaintiff to seek benefits under Section 3-112(e) of the Illinois Pension Code. 40 ILCS 5/3-112(e).

First, under express language in the Pension Code, the only party who is entitled to an “act-of-duty” survivor award is a “surviving spouse,” and because Officer Masterton was divorced at the time of his death, such an award is clearly inappropriate. In the alternative, in June of 2015, the Board executed and announced its decision to award a non-duty survivor pension to Officer Masterton’s dependent son under Section 3-112(c) of the Pension Code, 40



ILCS 5/3-112(c), and as such, under the Administrative Review Law, the Board no longer has jurisdiction to hear this matter. Quite simply, because Plaintiff did not file a timely challenge to the Board's final administrative decision, the Board as an administrative agency cannot reconsider its prior decision.

## **BACKGROUND**

### **A. The Board Initially Awards a Non-Duty Survivorship Pension.**

During the evening of December 6, 2014, Officer Owen Masterton ("Officer Masterton") suffered a fatal heart attack. (AR 141 at ¶1, AR 156 at ¶1). On December 8, 2014, Sergeant Jim Foley ("Sgt. Foley"), who serves as the Pension Board's Secretary, contacted the Board's accounting firm, Lauterbach & Amen, and completed a form to issue a survivor pension to Officer Masterton's son, who was 10-years-old at that time ("MFM"). (AR 93). Notably, within this communication, Sgt. Foley checked the box for "active-died off duty" to describe the nature of the incident involving Officer Masterton and further wrote "at work--not 'line of duty'" on the form. (*Id.*).

On January 2, 2015, attorney Craig Mielke, who at the time represented the interests of Kelly Masterton, MFM and/or the Estate of Officer Masterton,<sup>1</sup> wrote Pension Board attorney Rick Reimer. (AR 95-96, AR 141 at ¶3). Within the correspondence, Mielke informed Reimer that the coroner had not made a finding about the cause of Officer Masterton's death, and as a result, he had "not been able to advise Kelly that there is no chance that Owen's death is somehow duty related." Notwithstanding, Mielke asked if the Pension Board could award and

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<sup>1</sup> There is no indication that Mielke worked on this matter at any point after January 2, 2015. Notwithstanding, at the time of this correspondence, Mielke appeared to represent Kelly Masterton, who was Officer Masterton's ex-wife. Board records show that several months later, Kelly obtained legal documentation so that she could serve as a guardian for MFM for the purposes of obtaining pension benefits on his behalf.

authorize the payment of a 50% survivorship pension (under 5/3-112(c)) “while we all wait (a few months) to see the coroner’s report?”<sup>2</sup> (*Id.*).

In response, on January 5, 2015, Reimer informed Mielke that because the Mastertons were divorced at the time of the incident, Kelly was not entitled to a benefit. (AR 95-96, AR 142 at ¶4). However, while requesting the production of documents to confirm MFM’s relationship to Officer Masterton, Reimer asserted that the Board could commence payment to the dependent child “on an interim basis, without prejudice to any line of duty survivor claim.” (*Id.*). At the same time, Reimer questioned whether MFM could receive a line-of-duty survivor pension entitlement:

Upon reading 5/3-112(e), it is not clear whether a dependent child would be entitled to the line of duty survivor benefits. In any event, even if he would be eligible, the burden would be on you and your client to establish that death resulted from an “act of duty.”

(*Id.*)

Accordingly, on February 16, 2015, Sgt. Foley wrote Lauterbach & Amen that “after speaking with Reimer,” the Board wanted to approve the 50% pension benefit “without prejudice” (AR 98, AR 142 at ¶5). The Board met just two days later on February 18, 2015. Minutes from this meeting reflect that the Board voted to grant survivorship benefits to Officer Masterton’s son until he turns 18-years-old, and that the benefits were granted “without prejudice” and “pending attorney approval” (AR 100-101, AR 142 at ¶6). Similarly, the minutes from the Board’s April 30, 2015, meeting also state that it was paying this benefit out, but that the Board needed an opinion from Reimer on whether “the death of Officer Masterton will be considered a line or not line of duty death” (AR 103-104).

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<sup>2</sup> In Plaintiff’s February 3, 2017, correspondence that formally requested a hearing for a survivor pension, Plaintiff attached a “statement of facts,” with exhibits, which were not included within the Administrative Record. One of those exhibits shows that the Cook County Medical Examiner finished and filed the coroner’s report on February 8, 2015.

However, a few months later, it is apparent that the Board decided to move forward with awarding the non-duty 50% pension. On June 2, 2015, Sgt. Foley sent an email to Lauterbach & Amen that confirmed it was awarding only a non-duty benefit (AR 107-108). Attached to that communication, Board members signed the form of the final calculation (AR 110). On the same day, Sgt. Foley emailed Kelly Masterton to announce the Board had “just received the written legal opinion from the Board Attorney. We wish to start [MFM’s] checks at this time” (AR 112). Moreover, Sgt. Foley informed Kelly that after she submitted some outstanding documentation to the Board, “we will deposit the catch-up check and get the monthly annuity started” (*Id.*). Over the course of the next two weeks, numerous correspondence was exchanged between Sgt. Foley, Kelly and/or Lauterbach & Amen, that finalized the terms of the survivor pension, which based on information and belief, is still in effect today.

**B. Plaintiff Asks the Board for a Line-of-Duty Survivor Pension.**

Almost two years later, on February 3, 2017, Plaintiff filed a request that the Pension Board award a “line of duty” survivor pension under Section 3-112(e) of the Pension Code. 40 ILCS §5/3-112(e). (AR 70). On April 3, 2017, the Village filed a Motion to Intervene in this matter. (AR 73-81). After a review of information responsive to a Freedom of Information Act request, the Village supplemented its Motion with the same arguments for dismissal that are raised in this brief. (AR 84-91). On August 30, 2017, the Pension Board granted the Village’s Motion to Intervene. (AR 144-146). Following procedural arguments, the Board then partially granted the Village’s “Motion to Dismiss” Plaintiff’s application based on a lack of jurisdiction. On February 1, 2018, the Pension Board perfected this ruling by issuing a written Decision and Order that was later served on the parties. (AR 140-152).

On March 16, 2018, Plaintiff filed a Petition for Review under the Administrative Review Law against the Pension Board and the Village. (AR 156-167).

## ANALYSIS

### 1. **Line-of-Duty Survivor Benefits Can Only be Awarded to a “Surviving Spouse.”**

In the Estate’s brief, it accuses the Defendants of wanting “the court to ignore the language in §5/3-112(c), and interpret §5/3-112(e) in a vacuum.” Actually, the opposite is true. Under well-established canons of statutory construction, when all the provisions of Section 3-112 are read together, the legislature clearly did not intend to award duty-related benefits under Section 3-112(e) to anyone other than a “surviving spouse.”

When the legislature uses certain language in one section of a statute and different language in another part, courts assume that the legislature intended different meanings. *Illinois State Treasurer v. Illinois Workers’ Comp. Comm’n*, 2015 IL 117418, ¶28. “[N]o rule of construction authorizes [a court] to declare that the legislature did not mean what the plain language of the statute imports, nor may [a court] rewrite a statute to add provisions or limitations the legislature did not include.” *Id.* Another related maxim, *expressio unius est exclusio alterius*, which means “the expression of one thing is the exclusion of another,” is another aid of statutory construction that courts use “to help ascertain the intent of the legislature when that intent is not clear from the plain language of the statute.” *Bridgestone/Firestone, Inc. v. Aldridge*, 179 Ill. 2d 141, 151-52 (1997).

Here, the Illinois General Assembly only used the term “surviving spouses” in Section 3-112(e) without mentioning “unmarried children.” 40 ILCS 5/3-112(e). By contrast, other paragraphs throughout Section 3-112 expressly include (or refer to paragraphs that include) the term “unmarried children.” 40 ILCS 5/3-112(a), (b), (c). Accordingly, the legislature clearly

knows how to use the term “unmarried children” when it wants to do so. The fact that the legislature decided to use “unmarried children” in other subsections of Section 3-112, but omitted it from subsection (e), creates a presumption that the legislature intended that only “surviving spouses” would benefit from the “duty-related” survivorship pensions under Section 3-112(e).

As the Estate correctly notes, Section 3-112(a)<sup>3</sup> of the Pension Code includes a mechanism by which the applicable pension would go to a “surviving spouse,” and if there is no surviving spouse, “the police officer’s unmarried children who are under age 18.” 40 ILCS 5/3-112(a) (emphasis added). Likewise, survivorship annuities under both Sections 3-112(b)<sup>4</sup> and 3-112(c)<sup>5</sup> of the Code expressly state that they “shall be paid to the survivors in the sequence provided in subsection (a) of this Section.” 40 ILCS 5/3-112(b), 112(c). As such, it is clear that those provisions are applicable to both “surviving spouses” **and** minor “unmarried children.”

By contrast, the “duty-related” annuity provision under Section 3-112(e) expressly provides benefits to **only** a “surviving spouse.” 40 ILCS 5/3-112(e). This paragraph does not mention dependent children whatsoever, nor does it refer back to “subsection (a)” like the

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<sup>3</sup> Subsection (a) expressly refers to the survivors of individuals eligible for retirement benefits under Section 3-111 at the time of the officer’s untimely death. In a typical situation under 3-112(a), an officer would either already be receiving or qualified to receive (*e.g.*, 20 years of service and 50+ years old) a retirement annuity, which would then be paid to a “surviving spouse” or eligible minor child “upon death.”

<sup>4</sup> Subsection (b) essentially clarifies a situation where the survivors are related to a vested officer with 20 years of service, but who have not yet attained the age of 50 before an untimely death. Even though officers under the age of 50 are typically considered “deferred pensioners” for the purposes of a normal retirement pension, these survivors are treated the same as if they qualified under Subsection (a).

<sup>5</sup> Subsection (c) refers to a situation where an officer’s untimely death occurs before the individual has fully vested. In a situation like the present, where an officer has over 10 but less than 20 years of credible service, this annuity can be paid for any reason. Accordingly, such a scenario might be called a “non-duty survivor pension,” because eligible survivors qualify for this annuity regardless of the officer’s cause of death.

preceding provisions in the Pension Code. As such, based on the plain language of the Act, it is clear that only “surviving spouses” may benefit from a duty-related survivorship annuity. *Mitchell v. Vill. of Barrington*, 2016 IL App (1st) 153094, ¶ 35 (stating “it is a fundamental principle of statutory construction that the express mention of one thing in a statute excludes all other things not mentioned.”).

The legislative history of this provision also supports the Pension Board’s decision. “A statute’s legislative history and debates are valuable construction aids in interpreting an ambiguous statute.” *Krohe v. City of Bloomington*, 204 Ill. 2d 392, 398 (2003). In this situation, as part of a “downstate police pension package,” the legislature added Section 3-112(e) as an entirely new paragraph to the Pension Code’s other survivorship provisions. P.A. 939 (SB 851). Prior to this amendment’s effective date on February 1, 2001, all survivor pension recipients had received the same 50% annuity whereas a few years before this change, within a different legislative amendment, the surviving spouses of firefighters were already given the ability to receive 100% “act of duty” related annuities. 40 ILCS 5/4-114(i).

According to legislative floor debates prior to the final passage of SB 851, the bill sponsor intended that this particular amendment would only apply to spouses. Specifically, Senator Dudycz unambiguously stated on the Senate floor that: “[f]or the surviving spouses of a police officer killed from a sickness, accident, or injury incurred during duty performance that had begun receiving a pension or disability, the pension would not be less than one hundred percent of the salary of the last day of the deceased officer.” 91st Ill. Gen. Assem., Senate Proceedings, November 30, 2000, at 54 (emphasis added).

Quite simply, neither the statute’s plain language nor any principle of statutory construction supports Plaintiff’s arguments. Nevertheless, Plaintiff argues that this court has the

ability to “demolish” the “absurd” result of not allowing a minor child to receive a 100% benefit. Again, irrespective of whether the legislative’s motives should be questioned, there is no basis for applying language to Section 3-112(e) that does not appear in the statute. *See In re Marriage of Murphy*, 203 Ill. 2d 212, 219 (2003) (stating that a court, “under the guise of statutory interpretation, [cannot] ‘correct’ an apparent legislative oversight by rewriting a statute in a manner inconsistent with its clear and unambiguous language.”).

Moreover, it should be noted that these sorts of policy choices are more appropriately left to legislature. For instance, the General Assembly has made the policy decision that the former spouse of divorced officer cannot receive benefits, while the children of officers can receive non-duty benefits, but only in the absence of a “surviving spouse” and only until the child reaches the age of 18. *See* 40 ILCS 5/3-112(c). In fact, the children of police officers who receive survivorship pensions (irrespective of cause) under Section 3-112(c) are entitled to 50% of salary, whereas children of firefighters under similar circumstances only receive 20% of the decedent’s prior salary. 40 ILCS 5/4-114(b).

While one can debate the wisdom of the General Assembly “drawing lines” between eligible and non-eligible dependents in such a way, those decision generally are left to the legislature’s discretion—not judicial or administrative review. As such, Plaintiff’s only redress is to seek a legislative amendment, and there is no legal support for this current action. *See Bremer v. City of Rockford*, 2016 IL 119889, ¶ 34 (stating “[w]hile there may be legitimate policy reasons for expanding the definition of [a statute], any such change must come from the legislature, not this court.”).

**2. The Pension Board Does Not Have Jurisdiction to Reopen and Rehear its Earlier Award.**

While the Board properly determined that it did not have jurisdiction to reopen Plaintiff's hearing because the Pension Code does not allow the children of officers to receive line-of-duty survivor benefits, the Board also erroneously determined that it generally has the ability to award annuities "without prejudice." (AR 146-148). However, under established law, the Pension Board's jurisdiction over this matter ended when it followed through on a final administrative action for benefits in June of 2015. As such, this Court has a separate basis for upholding the Board's decision not to reopen this matter.

This Court has jurisdiction to hear this question of law because it was addressed by the Pension Board and is part of the administrative record. *Illinois Dep't of Human Servs. v. Porter*, 396 Ill. App. 3d 701, 716 (4th Dist. 2009). Under the Administrative Review Law, "[e]very action to review any final administrative decision shall be heard and determined by the court with all convenient speed. The hearing and determination shall extend to all questions of law and fact presented by the entire record before the court." *Id. quoting* 735 ILCS 5/3-110 (emphasis added).

In this situation, the Board does not have the legal authority to reconsider one of its prior decisions even if it wanted to do so. It is well-established that because "administrative agencies are creatures of statute, they may allow rehearings or modify or alter their decisions only where authorized to do so by statute." *See People ex rel. Olin Corp. v. Dep't of Labor*, 95 Ill. App. 3d 1108, 1112 (5th Dist. 1981); *Board of Educ. of Mundelein Elem. Sch. Dist. No. 75 v. Ill. Educ. Labor Relations Bd.*, 179 Ill. App. 3d 696, 702 (4th Dist. 1989) ("an administrative agency may allow a rehearing, or modify and alter its decisions, only when authorized to do so by statute").



Here, there is nothing in the Pension Code that would allow a board to award benefits “without prejudice,” or otherwise retain jurisdiction indefinitely.<sup>6</sup> Under Section 5/3-133, the Board is empowered “[t]o order the payment of pensions and other benefits and to issue certificates signed by its president and secretary to the beneficiaries stating the amount and purpose of the payment.” 40 ILCS 5/3-133. While the Board does have some statutory authority to correct a “mistake” (*i.e.* any “clerical or administrative error”), other “final administrative decisions” can only be appealed to the circuit court under the Administrative Review Law. 40 ILCS 5/3-144.2, 5/3-148.

Obviously, no such “mistake” is alleged to have occurred in this matter, especially where Section 3-144.2 excludes from the meaning of “mistake” any “benefit as it relates to the reasonable calculation of the benefit or aspects of the benefit based on salary, service credit, calculation or determination of a disability, date of retirement, or other facts significant to the calculation of the benefit.” *Id.*; *see also Rossler v. Morton Grove Police Pension Bd.*, 178 Ill. App. 3d 769 (1st Dist. 1989); *Sola v. Roselle Police Pension Bd.*, 342 Ill. App. 3d 227 (2d Dist. 2003). *See also Kosakowski v. Bd. of Trustees of City of Calumet City Police Pension Fund*, 389 Ill. App. 3d 381 (1st Dist. 2009).

Here, the evidence is clear that shortly after Officer Masterton’s death, the Board wanted to fulfill the Estate’s request, as communicated through Attorney Mielke, to immediately award the 50% survivor non-duty pension under Section 5/3-112(e) “while we all wait (a few months) to see the coroner’s report.” (AR 95-96). Whether the Board actually has this authority, these

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<sup>6</sup> Within the Decision and Order, the Board did not address the question of whether it had the authority to make interim decisions and/or retain jurisdiction indefinitely. Instead, it merely argued that in this instance, even though it had been paying benefits to MFM for years, it never fulfilled its statutory duty of issuing a final administrative decision. Of course, it is obvious why an administrative agency should not have the ability to make an interim decision that is not subject to appeal days, months or years later (if ever). The Pension Code surely does not give a Pension Board this unbridled authority.

benefits were not finalized or paid until June of 2015. (AR 110). At that point, approximately four months after the coroner's report was filed, the Board clearly communicated that it was awarding a non-duty benefit and approved the final calculation of benefits. (AR 103-104). Moreover, within a June 2, 2015 email, Sgt. Foley clearly announced to Kelly that the Board was awarding such benefits. (AR 112).

Accordingly, under the Administrative Review Law, to the extent that Officer Masterton's estate wanted to change the award to some type of line-of-duty benefit, it had 35 days from the date it received this notice of the final administrative action. 735 ILCS 5/3-103; *Johnson v. Machetti*, 228 Ill. App. 3d 420, 423 (1992) (finding a board's letter that a 50% award had been granted was sufficient notice that the board had taken a final administrative action for administrative review purposes). As a result, the Estate's February 3, 2017 application to reopen this matter is untimely and improper as a matter of law.

### **CONCLUSION**

As set forth above, the Village respectfully asks that the Court deny and dismiss Plaintiff's Petition.

### **VILLAGE OF GLENVIEW**

By: /s/ Paul A. Denham  
One of Its Attorneys

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**Firm # 47491**

**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that he caused a true and correct copy of the foregoing **DEFENDANT VILLAGE OF GLENVIEW'S RESPONSE BRIEF IN OPPOSITION TO THE COMPLAINT FOR ADMINISTRATIVE REVIEW** to be served upon the following, filing same with the Court's electronic filing system and via electronic mail on this 26<sup>th</sup> day of November, 2018.

David M. Stepanich  
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\_\_\_\_\_/s/ Paul A. Denham

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

**KELLY A. MASTERTON,  
GUARDIAN OF THE ESTATE  
OF M.F. MASTERTON**

**Plaintiff,**

**v.**

**VILLAGE OF GLENVIEW  
POLICE PENSION BOARD, and  
the VILLAGE OF GLENVIEW,  
Defendants.**

**No. 2018-CH-03503**

**Judge David B. Atkins**

**DEFENDANT VILLAGE OF GLENVIEW POLICE PENSION  
BOARD'S MEMORANDUM IN OPPOSITION TO COMPLAINT FOR  
ADMINISTRATIVE REVIEW**

Now comes the Defendant, the Glenview Police Pension Board (hereinafter "Pension Board") by and through its attorneys Reimer & Dobrovolsky PC, and in opposition to the Plaintiff's Complaint for Administrative Review states as follows:

**I. NATURE OF THE CASE**

On December 6, 2014, Glenview police officer Owen Masterton suffered a fatal heart attack. The nature and cause of Officer Masterton's death is not properly before the Court at this time. At the time of his death Officer Masterton was divorced, had not remarried, and left a 10-year-old son with his ex-wife Kelly, the guardian of the son's estate (hereinafter the "Plaintiff"). At the time of his death, Officer Masterton was still in service as a police officer with nineteen (19) full years of creditable service.

On January 2, 2015, Attorney Craig S. Mielke sent an email to the Pension Board's attorney questioning whether the Glenview Police Pension Board could commence payment of an undisputed 50% non-duty pension (sic) to the dependent son, and whether or not Officer Masterton's ex-spouse was required to fill out any application, while the coroner/medical examiner was determining the cause of Officer Masterton's death. (AR 95-96)<sup>1</sup> The Pension Board's attorney responded the Pension Board could commence payment to a dependent child on an interim basis, without prejudice, to any line of duty survivor claim. Mr. Mielke was further advised that upon review of §3-112(e) of the Illinois Pension Code, it was not clear whether a dependent child would be entitled to a line of duty survivor benefit (AR 95).

On February 18, 2015, the Pension Board voted to grant "survivorship" (non-disability) benefits to Officer Masterton's dependent child, until he turned eighteen (18). Benefits were granted "without prejudice" and "pending attorney approval." (AR 100-101). On February 3, 2017, attorney for Plaintiff filed a request the Pension Board "review its determination to award a 50% pension to survivors under 40 ILCS §3-112(c), and award a pension subsequent to 40 ILCS 5/3-114.1(a) (sic)" (AR 70). Section 3-114(e) would allow a "surviving spouse" of a police officer that dies as a result of performance of an act of duty, lifetime benefits based upon 100% of salary at the time of the officer's death. On or about April 3, 2017, the Village of Glenview (hereinafter the "Village") filed its Motion to Intervene (AR 71-112).

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<sup>1</sup> References are to relevant pages of the Administrative Record.

A hearing was held before the Pension Board on August 30, 2017. (AR 1-69). The purpose of this hearing was threefold. First, to determine whether the Village's Motion to Intervene be granted. Second, whether the Village's Motion to Dismiss for lack of jurisdiction should be granted. Third, whether the Pension Board had jurisdiction to award a "dependent child" a "line of duty survivor" benefit under §3-112(e) of the Illinois Pension Code. (AR 3-4, 40-41, 138).

The Pension Board Trustees voted on August 30, 2017, and issued its written Decision and Order on February 13, 2018, setting forth its determinative reasoning. (AR 140-155). In its Decision and Order, the Pension Board reached the following determinations: (1) The Village's Motion to Intervene was granted, without objection. (AR 11, 145-146); (2) The Village's Motion to Dismiss based on the Pension Board's lack of jurisdiction was denied (AR 146-148); and (3) Plaintiff's claim for surviving spouse benefits was dismissed for lack jurisdiction because Plaintiff's minor child did not qualify as a "surviving spouse" under §3-112(e) of the Illinois Pension Code. (AR 146-148). The Pension Board did not address or reach any determination regarding the merits of whether there was any basis for line of duty death benefits. In other words, no determination was made as to whether Officer Masterton's death was from "performance of an act of duty." (AR 140-141). The Plaintiff was awarded the "dependent children's" survivor benefit under §3-112(c) of the Pension Code. This benefit will be received until he reaches age 18. (AR 152).

A timely Complaint for Administrative Review was filed. In her Memorandum, Plaintiff argues the Pension Board misinterpreted §3-112 of the Pension Code and that a “dependent child” should be considered a “surviving spouse” for purposes of §3-112(e) of the Illinois Pension Code. Although Plaintiff raises a number of interesting and sympathy invoking reasons why this Court should rule in her favor, she urges this Court to ignore well-established principles of statutory construction in her request and asks this Court redraft statutory provisions in granting her request for relief. This Court should decline her request and affirm the decision of the Pension Board.

### **III. ISSUES PRESENTED FOR REVIEW**

The sole issue before this Court is whether the Pension Board erred in construing §3-112(e) of the Illinois Pension Code. In other words, whether a “dependent child” is eligible for line of duty “surviving spouse” benefits.

### **IV. STATUTORY PROVISIONS**

The following statutory provisions are relevant to this matter and provide in pertinent part, §3-112. Pension to Survivors.

(a) Upon the death of a police officer entitled to a pension under Section 3-111, the surviving spouse shall be entitled to the pension to which the police officer was then entitled. Upon the death of the surviving spouse, or upon the remarriage of the surviving spouse if that remarriage terminates the surviving spouse’s eligibility under Section 3-121, the police officer’s unmarried children who are under age 18 or who are dependent because of physical or mental disability shall be entitled to equal shares of such pension. If there is no eligible surviving spouse and no eligible child, the dependent parent or parents of the officer shall be entitled to receive or share such pension until their death or marriage or remarriage after the death of the police officer.

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(b) Upon the death of a police officer while in service, having at least 20 years of creditable service, or upon the death of a police officer who retired from service with at least 20 years of creditable service, whether death occurs before or after attainment of age 50, the pension earned by the police officer as of the date of death as provided in Section 3-111 shall be paid to the survivors *in the sequence provided in subsection (s) of this section.*

(c) Upon the death of a police officer while in service, having at least 10 but less than 20 years of service, a pension of 1/2 of the salary attached to the rank or ranks held by the officer for one year immediately prior to death shall be payable to the survivors *in the sequence provided in subsection (a) of this Section.* If death occurs as a result of the performance of duty, the 10 year requirement shall not apply and the pension to survivors shall be payable after any period of service.

(e) The pension of the surviving spouse of a police officer who dies (i) on or after January 1, 2001, (ii) without having begun to receive either a retirement pension payable under Section 3-111 or a disability pension payable under Section 3-114.1, 3-114.2, 3-114.3, or 3-114.6, and (iii) as a result of sickness, accident, or injury incurred in or resulting from the performance of an act of duty shall not be less than 100% of the salary attached to the rank held by the deceased police officer on the last day of service, notwithstanding any provision in this Article to the contrary.

#### 735 ILCS §5/3-101 Definitions (in pertinent part)

"Administrative decision" or "decision" means any decision, order or determination of any administrative agency rendered in a particular case, which affects the legal rights, duties or privileges of parties and which terminates the proceedings before the administrative agency.

### V. STANDARD OF REVIEW

The two most critical facts contained in the Administrative Record are not in dispute. At the time of his death, Officer Masterton was divorced, was not married, and had no "surviving spouse." (AR 53). Moreover, Officer Masterton's son was dependent within the meaning of §3-112(a) and eligible for benefits. (AR 53). Since Officer Masterton had more than 10 years of service, but less than 20 years of service, as a dependent child, his son was entitled to benefits under §3-112(c).



On administrative review, rulings on a question of fact will be reviewed under the manifest weight standard. Mixed questions of law and fact are reviewed under the clearly erroneous standard, while review of questions of law are reviewed *de novo*. *Wade v. City of North Chicago Police Pension Board*, 226 Ill.2d 485(Ill. 2007). Consequently, Defendant asserts the appropriate standard of review is *de novo*.

However, it must be remembered under any standard of review, the plaintiff to an administrative review proceeding bears the burden of proof, and relief should be denied if he or she fails to sustain that burden. *Marconi v. Chicago Heights Police Pension Board*, 25 Ill.2d 497 (Ill. 2006). In this case, Plaintiff has failed to meet her burden.

## VI. ARGUMENT AND LAW

### **THE PENSION BOARD'S DECISION IS BASED ON WELL-ESTABLISHED PRINCIPLES OF STATUTORY CONSTRUCTION**

#### **1.**

#### **The plain and unmistakable provisions of §3-112(e) do not include a dependent child.**

The crux of the Pension Board's decision was it lacked jurisdiction due to the fact Plaintiff was seeking line of duty death benefits pursuant to a statutory provision that does not include dependent children. Rather, §3-112(e) provides line of duty death benefits to the "surviving spouse" of a police officer who dies as a result of performance of an act of duty. Contrary to Plaintiff's assertions, the Pension Board is not attempting to establish "roadblocks" or attempt to "deprive a minor child of the benefits" to which they may be entitled. (Plaintiff's Brief p. 11). The Pension Board is simply bound to enforce the

provisions of the Pension Code according to its plain and unmistakable language regardless of the result.

“The cardinal rule of statutory construction, to which all other canons and rules are subordinate, is to ascertain and give effect to the intent of the Legislature.” *Wade*, 226 Ill.2d 485 at 509. “Although a court should first consider the language of the statute, a court must presume that the Legislature, in enacting the statute, did not intend absurdity or injustice.” *Id.* at 510.

While this case is a case of first impression, this is not the first instance where the Illinois Supreme Court has been called upon to interpret provisions of the Illinois Pension Code. In *Roselle Police Pension Board v. Village of Roselle*, 232 Ill.2d 546, (2009), the Court was called upon to determine whether provisions of the Illinois Pension Code permitted the Pension Board to award the surviving spouse of a police officer having been granted line of duty disability benefits, annual cost-of-living increases.

In *Roselle*, a police officer was granted a line of duty disability pension. Upon attainment of age 60, the officer began receiving statutory cost-of-living increases (“COLA”) under §3-111.1(c) of the Illinois Pension Code. When the officer died in 2005, his surviving spouse continued receiving her deceased husband’s line of duty disability benefits. The pension board was uncertain as to whether or not the surviving spouse was entitled to the annual COLA increases paid to her husband. After a hearing, at which the Village of Roselle intervened, the Pension Board issued a written decision and order finding the surviving spouse was entitled to the COLA increases. *Id.* 232 Ill.2d at 548-550.

On administrative review, the circuit court reversed the board's decision on the basis "there is no statutory authorization for cost-of-living increases for surviving spouses under (The Illinois Pension Code)." *Id.* at 551. The Appellate Court affirmed. The Illinois Supreme Court rejected arguments similar to those raised by the Plaintiff here.

In *Roselle*, the pension board first argued that the provision providing COLA increases to police officers was ambiguous and should be liberally construed to entitle the survivors to step into the shoes of the decedent officer in order to receive COLA benefits. *Id.* at 555. The Court rejected the "liberal construction" argument. The Court reasoned as follows:

"Principal that the language of pension statutes is to be liberally construed in favor of the rights of the pensioner is no exception to the foregoing rules. If legislative intent is obvious from the language used in the pension act, that intention must be made effective. The liberal construction canon does not authorize the judiciary to give the act a meaning not expressed in it. *Id.* at 552 citing *Mattis v. State Universities Retirement System*, 212 Ill.2d 58, 76 (2004).

Ultimately, the Court concluded that "a careful reading of (the Pension Code) discloses no provision expressly authorizing the continuation of annual increases to survivors." *Id.* at 556.

The Court also rejected "public policy" arguments, seemingly made by Plaintiff here. Most importantly, the Court pointed out its role and limitations when faced with statutory construction and public policy arguments. Appropriately, the Court specifically commented on its role when it stated:

"To this we can only respond that the policy arguments they advance are properly addressed to the Legislature rather than this court. We do not sit as a superlegislature to weigh the wisdom of legislation nor to decide whether

the policy which it expresses offends the public welfare.” *Id.* at 557 (citations omitted).

Further the Court distinctly stated, “we must interpret and apply Statutes in the manner in which they are written and cannot rewrite them to make them consistent court’s idea of orderliness and public policy.” *Id.* at 558. Just as in this case, there is no express statutory language authorizing line of duty death survivor benefits to any one other than a “surviving spouse” under §3-112(e) of the Pension Code.

Further support for the Pension Board’s position is found in *In Re Marriage of Hannon*, 207 Ill.App.3d 329, 333 (2nd Dist. 1991). In her brief, Plaintiff dismisses this as a mere “divorce” case, addressing the allocation of marital property. (Plaintiff’s Brief p. 7) Plaintiff ignores the significance of *Hannon* as it relates to principles of statutory construction.

*Hannon* established that under the Illinois Pension Code, “surviving spouse” has a definite and defined meaning. In *Hannon*, a firefighter’s former spouse asserted that §4-114 of the Pension Code included a former spouse within the meaning of “surviving spouse.” She also argued the Pension Code did not define “surviving spouse” and the pension statute must be construed to favor the rights of beneficiaries. *Id.*

The Court rejected the former spouse’s assertions. Instead, the Court explained, “As the Fund correctly notes, an unambiguous statute shall be construed consistent with the ordinary and popularly understood meaning of its words.” *Id.* The Court further reasoned, “Given the fact, and the absence of any contrary suggestion in the legislative language, we find inescapably clear that section 4-114(a)’s reference to a ‘surviving

spouse' includes *only* a person who is married to a pensioner and alive at the time of the pensioner's death. A former spouse, having had his marital relationship severed by dissolution, is not included in that designation." *Id.* (Emphasis added).

In the present case, §3-112(e) provides that a "surviving spouse" of a police officer who dies as a result of performance of an act of duty, is entitled to a lifetime survivor benefit at a rate of 100% of the salary attached to the police officer's rank at the time of his death. Unlike §3-112(a) of the Pension Code, there is no mention made of a "dependent child" or "dependent parents," or alternative beneficiaries.

Why the Legislature left out beneficiaries other than a "surviving spouse" in §3-112(e) is unknown. Perhaps the Legislature did not want to expand the 100% survivor benefit for officers who die as a result of the performance of an act of duty to any other class of beneficiaries other than a "surviving spouse." What is known, is the Legislature specifically identified those beneficiaries who would be eligible as an officer's survivor under §3-112(a) in circumstances where an officer dies from a cause other than performance of an act of police duty. See §3-112(a). In that section specific beneficiaries are identified as a surviving spouse, dependent children, or dependent parents. In any event, under §3-112(a), the dependent children or dependent parents are only eligible if there is no surviving spouse. In other words, the Legislature intended dependent children and dependent parents to be contingent beneficiaries only eligible for benefits in the absence of a surviving spouse.

Moreover, unlike §3-112(e), the provision at issue here, §3-112(b) and §3-112(c) contain specific limiting language “shall be paid to the survivor in the sequence provided in subsection (a) of this Section.” (emphasis supplied). Section 3-112(b) and 3-112(c) are scenarios where survivor benefits are awarded based upon years of service. Clearly, had the Legislature intended to include that same language in §3-112(e), it would have done so.

The Pension Board is not unsympathetic to Plaintiff’s case. It merely believes that had the legislature intended dependent children (or for that matter dependent parents) to be eligible for the enhanced benefit provided to police officers who die as a result of the performance of an act of duty, it would have included that language in §3-112(e). Unfortunately, the Pension Board is without the statutory authority to expand the benefits provided under this statutory provision to anyone other than a surviving spouse.

## 2.

### **Express mention of one thing in the statute excludes all other things not mentioned.**

Yet another principle of statutory construction supports the Pension Board’s decision in this matter. It is a fundamental principle of statutory construction that the express mention of one thing in the statute excludes all other things not mentioned. *Welch v. Johnson*, 147 Ill.2d 40, 52; *Mitchell v. Village of Barrington*, 16 Ill.App. (1<sup>st</sup>) 153094 ¶35.

In *Mitchell*, the plaintiff was a civilian, non-sworn paramedic for the Village of Barrington. After sustaining an injury on the job, plaintiff was unable to return to perform

her previous duties and was terminated by the Village. *Id.* at ¶1. Plaintiff later sought health care benefits under the Public Safety Employee Benefits Act, 820 ILCS ¶320/1 *et seq.* (“PSEBA”) The Village denied these benefits, finding that she was not covered under PSEBA. After the denial, a lawsuit was filed, and summary judgment was entered in favor of the Village. Plaintiff appealed.

On appeal, the court was called upon to construe the provisions of PSEBA. The court rejected the plaintiff’s suggestion that as a non-sworn civilian paramedic, she was eligible for benefits under PSEBA. In applying the “fundamental principle of statutory construction that the express mention of one thing in the statute excludes all other things not mentioned,” the court reasoned as follows:

“In this case, the legislature amended the statute so that the term firefighter also included licensed EMTs who are *sworn* (emphasis added) members of a public fire department. Under statutory construction jurisprudence, the inclusion of “sworn” licensed emergency medical technicians excludes other positions not mentioned, including “unsworn” licensed emergency medical technicians.” *Id.* at ¶35.

Accordingly, the Court rejected plaintiff’s argument that unsworn civilian paramedics were considered firefighters under PSEBA.

Applying this principle of statutory construction demonstrates that the Legislature’s inclusion of the term “surviving spouse” in §5/3–112(e) of the Pension Code excludes all other categories of beneficiaries not mentioned, i.e. dependent children or dependent parents.

Similarly, the Legislature included the following language in §3-112(b) and §3-112(c) of the survivor’s provisions of the Pension Code:

“Shall be paid to the survivors in the sequence provided in subsection (a) of this Section.”

Plaintiff deliberately ignored this critical point. Clearly, had the Legislature wanted the line of duty death benefits under §3-112(a) to be paid in that “sequence,” it would have done so.

Once again, despite the harsh or unpalatable consequences, it is not proper for the Pension Board, or the Court in this case to read in the term “dependent children” into §5/3-112(e) of the Pension Code, or presume that the Legislature intended those line of duty survivor death benefits to be paid out in a “sequence.” For this reason, the Pension Board’s decision must be affirmed.

## **VII. CONCLUSION**

For the reasons set forth herein, Defendant, Village Glenview Police Pension Board respectfully asserts that this Court deny the Plaintiff’s Complaint for Administrative Review and affirmed the decision of the Pension Board as a relates to its construction and interpretation of §5/3-112(e) of the Pension Code. To the extent that Plaintiff relies upon evidence not before or considered by the Pension Board, those matters should be stricken or disregarded by the Court in their entirety. Specifically, Attachment C to Plaintiff’s Petition entitled “Public Safety Officers Benefit Office Claim Determination.”



Respectfully Submitted,

REIMER & DOBROVOLNY PC

By:



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KELLY A. MASTERTON, GUARDIAN OF )  
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Plaintiff, )  
v. ) NO. 2018 CH 03503  
VILLAGE OF GLENVIEW POLICE PENSION )  
BOARD, and VILLAGE OF GLENVIEW )  
Defendants, )

**PLAINTIFF’S REPLY TO DEFENDANT VILLAGE OF GLENVIEW’S RESPONSE  
BRIEF AND GLENVIEW POLICE PENSION BOARD’S RESPONSE BRIEF IN  
OPPOSITION TO PETITION FOR ADMINISTRATIVE REVIEW**

NOW COMES the Plaintiff, KELLY A. MASTERTON, Guardian of the Estate of M. F. Masterton, by and through her attorney, David M. Stepanich, and replies to the response to her Petition for Administrative Review as follows:

**INTRODUCTION**

The court, by this point, is well familiar with the issue at question, the interpretation of 40 ILCS 5/3-112 Pension to Survivors as applied to the facts in this case. The facts as stated in the Plaintiff’s briefs in support are referenced here. It is conceded by all parties that the nature of this dispute is strictly legal, and that there are no disputed facts.

The VILLAGE OF GLENVIEW (VILLAGE) includes in their response an argument that the GLENVIEW POLICE PENSION BOARD (BOARD) does not have jurisdiction to re-open and re-hear its early award. The VILLAGE previously filed a Motion to Dismiss based on the material contained in the original petition for review. As such, the VILLAGE has already

waived the issue of jurisdiction, and the same should be disregarded as the VILLAGE has previously filed a Motion to Dismiss on the merits of the petition. At no time in the Motion to Dismiss was this argument presented, and the court denied the Defendant's Motion to Dismiss. Oddly, the VILLAGE raised this argument in their brief in support of their Motion to Dismiss, but stated they wanted to "pursue this argument at the appropriate time". The parameters of 735 ILCS 5/2-301(a) require that all matters pertinent to jurisdiction be raised in their initial pleading, and the VILLAGE's half-hearted effort here is unconvincing.

To its credit, the BOARD does not include this argument in its response brief. The inclusion of this argument by the VILLAGE is superfluous. The BOARD has the ability to set its own rules for the conduct of its hearings, which includes placing matters before it for hearing or reserving them for later hearing. Section 735 ILCS 5/3-110, Scope of Review, provides:

"Every action to review any final administrative decision shall be heard and determined by the Court with all convenient speed. The hearing and determination shall extend to all questions of law and fact presented by the entire record before the Court. No new or additional evidence in support of or in opposition to any finding, order, determination or decision of the administrative agency shall be heard by the Court. The findings and conclusions of the administrative agency on questions of fact shall be held to be prima facie true and correct."

The BOARD submitted the administrative record which denied the motion by the VILLAGE to dismiss the petition for lack of jurisdiction. (Administrative Record Pages 146 to

148) The VILLAGE is again raising the issue, without merit, it should be summarily rejected by this court.

### **ISSUE FOR REVIEW**

#### **Was the Glenview Police Pension Board's written decision interpreting sections 5/3-112(a), (c), (e) and dismissing the application for line of duty benefits due to a lack of jurisdiction erroneous?**

Both the VILLAGE and BOARD argue that the language of Section 112(e) is restrictive in its effects on the facts of this case. The court has reference to the language of this statute and it will not be recited in full. However, the language of subsection (e) refers to the pension of the surviving spouse of a police officer. The VILLAGE, to some extent, and the BOARD, to a greater extent, place their interpretation of the affect of the language of subsection (e) in a vacuum without reference to the other subsection of Section 112.

To briefly review the principals of statutory construction, it is important to recall that the intent of the legislature should be divined from the language of the statute, according to the plain and unmistakable provisions attaching the popular meaning to the words, unless the spirit and purpose of the act dictate otherwise. *Edwards v. Board of Trustees of Police Pension Fund 22 Ill. App. 3d 260 (Ill. 1974)* The Plaintiff submits that the language of Section 112, “Pension to **Survivors**” is clear. The VILLAGE and BOARD are deliberately omitting key portions in order to misstate the intent of the legislature.

Simply put, the legislature clearly indicated an intention to award line of duty benefits to police officers who die in the performance of duty to more than one party. Article 3 of the Illinois Pension Code governs all matters relating to the police pension fund we must liberally construe its provisions in favor of police officers and their surviving dependents. *Hahn v. Police Pension Fund of The City of Woodstock* 138 Ill. App.3d 206 (Ill. 1985)

We presume that the legislature did not intend an absurd, inconvenient, or unjust result and the courts may not read into the statutes any exemptions, limitations, or conditions that are contrary to the legislature's intent. *JP Morgan Chase Bank v. Earth Foods* 238 Ill. 2d 455 (Ill. 2010) The best evidence of legislative intent is the language used in the statute itself which must be given its plain and ordinary meaning. The statute should be evaluated as a whole with each provision construed in connection with every other section. If legislative intent can be discerned from the statutory language this intent must prevail no resort to other tools as statutory construction is necessary. *Roselle Police v. Village of Roselle* 232 Ill. App. 2d 546 (Ill. 2009)

Taking those rules of law and applying them to this situation, it is clear that the legislature intended that there be a statutory progression for recipients of pension benefits, and it is uncontested that the 50% provision follows that sequence. What is obvious from the statute as that the legislatures use of the plural term *survivors* evinces an intent to include the 100% provision in the sequence of *survivors*. Construing subsection (e) with reference to subsections (a) and (c) make this obvious, and the omission of the *survivors* language in subsection (e) is not because the legislature deliberately meant to narrow the class of recipients of line of duty benefits to just the surviving spouse. Such an argument is bereft of logic and unbecoming of the

Defendant, BOARD, whose duty it is to look after their retired, disabled, and deceased police officers.

The problem with the interpretation by the Defendants is that they presume that the legislature in fact intended that line of duty benefits would only be awardable to a surviving spouse of a police officer either killed or disabled in the line of duty. In doing so, the VILLAGE and the BOARD gloss over the language of Section 112, subsection (c). Simply put, the legislature clearly indicated an intention to award line of duty benefits to police officers who die in the performance of duty to more than one party.

The Defendants would prefer that this court ignore the plural language in Subsection (c) in order to deny the applicability of line of duty benefits to someone other than a surviving spouse. In fact, the BOARD makes the remarkable error on page 11 of its response brief to state that the language in Subsections (b) and (c) “contains specific limiting language”, “shall be paid to the survivor in the sequence provided in subsection (a) of this section”. Either the BOARD deliberately misquoted the provision, or are guilty of wishful thinking, because in fact the word “*survivor*” is plural in subsections (b) and (c) “*survivors*”, and therefore indicates a recognition of the legislature that an officer who dies in the performance of duty might not have a surviving spouse.

Since the legislature then, in fact, clearly did evince an intent to award survivor benefits to “*survivors*”, the BOARD’s pained argument regarding the express mention of one thing in the statute excludes all other things not mentioned is completely incorrect. The legislature did in

fact state that survivors are to receive line of duty benefits, and the BOARD's painful attempt to compare Public Safety Employee Benefits Act to the Pension to Survivors statute is unavailing and frankly baffling.

The BOARD compounds its deceit later in their response brief by quoting a fragment of subsections (b) and (c) "Shall be paid to the survivors in the sequence provided in subsection (a) of this section". Initially, this is an improper quotation because the sentence does not begin with the word "Shall". The only conclusion is the BOARD deliberately omitted the inconvenient portion of subsection (c), which they quoted on page 12 of their response brief. Suffice to say, it should have been clearly delineated that this was a portion of the sentence, not the complete sentence. The complete language of subsection (c) reads "Upon the death of a police officer while in service, having at least 10 but less than 20 years of service, a pension of 1/2 of the salary attached to the rank or ranks held by the officer for one year immediately prior to death shall be payable to the survivors in the sequence provided in subsection (a) of this section. If death occurs as a result of the performance of duty, the 10 year requirement shall not apply and the pension to survivors shall be payable after any period of service." (emphasis added) The two sentences clearly are in conjunction and contemplate that if the police officer did not have a surviving spouse, and did not die in the performance of duty, the survivors progression in Subsection (a) would be applied. That is what the BOARD in fact awarded in this case. However, the same subsection specifically contemplates that if the police officer died in the performance of duty, the 100% pension of Subsection (e) would be applicable, and it contemplates survivors, i.e. referring to the progression in Subsection (a).

The BOARD goes on to make the baseless claim that the Plaintiff “deliberately ignored this critical point” (BOARD’s Response Brief Page 13). The Plaintiff did nothing of the sort. Further, the Plaintiff’s brief in support has a very exhaustive discussion of this provision from pages 8 through 10.

The Plaintiff believes her brief in support correctly lays out the proper interpretation of the language of the statute, and that the suggestion that the legislature did not intend to award performance of duty benefits to anyone but a surviving spouse is completely incorrect. The clear intent of the legislature was that those survivor benefits should be available in the order delineated in Subsection (a). It should be obvious from the language in the statute that the BOARD and the VILLAGE are misinterpreting the statute, that the BOARD by denying jurisdiction based on a misreading of Subsection (e) has erroneously construed the statute.

As the Plaintiff has artfully laid out in her brief in support, the effect of this erroneous decision would mean that a police officer who dies in the performance of duty, and does not have a surviving spouse but unmarried children who are under the age of 18, would not receive the 100% pension, but would have to be content with the 50% pension referenced in the first sentence of subsection (c) while completely ignoring the second sentence of subsection (c).

Both the VILLAGE and BOARD make weak and unconvincing references to the absurd and unjust results that would happen, and in fact have happened, to the unmarried child under the age of 18 of Officer Masterton in this case. The BOARD has had to misstate the applicable language in order to support its interpretation, and the court should see through their



unpersuasive interpretation. Neither the BOARD nor the VILLAGE address the Plaintiff's argument in the brief in support that under this interpretation a police officer who died in the performance of duty with less than 10 years of service the survivors would receive a 100% pension. When a police officer died in a performance of duty between 10 and 20 years of service would only receive 50%. To suggest that the legislature intended that result is absurd. In retrospect, it is not a legislative mistake, it is an error in application and an erroneous decision by the BOARD to distort the clear language of subsection (c) in favor of denying benefits to an unmarried child under the age of 18.

### **CONCLUSION**

As the Plaintiff has forcefully and convincingly demonstrated in her brief, the decision of the GLENVIEW POLICE PENSION BOARD to deny consideration of Line of Duty benefits base on jurisdictional grounds is simply erroneous. This court should reverse that decision, and order the BOARD to provide a hearing on the merits on the Plaintiff's petition at their first opportunity.

Respectfully Submitted,

BY: David M. Stepanich  
David M. Stepanich

Prepared by:  
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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

KELLY A. MASTERTON,  
Guardian of the Estate of M. F.  
MASTERTON,  
Plaintiff,

v.

VILLAGE OF GLENVIEW POLICE  
PENSION BOARD, and the  
VILLAGE OF GLENVIEW,  
Defendant.

No. 2018-CH-03503

Calendar 16

Judge David B. Atkins

JUDGE DAVID B. ATKINS

MAR 22 2019

Circuit Court-1879

**MEMORANDUM OPINION AND ORDER**

THIS CASE COMING TO BE HEARD on Plaintiff's Petition for Administrative Review, the court having considered the briefs submitted and being fully advised in the premises,

THE COURT HEREBY ORDERS that Plaintiff's Petition is GRANTED.

**Background**

This is a dispute surrounding the death of Glenview Police Officer Owen Masterton in 2014, and the proper pension benefits owed to his surviving son, Plaintiff M. F. Masterton ("MFM"). It is undisputed that Officer Masterton had 19 full years of service with the Glenview Police Department at the time of his death, and that the Defendant Pension Board initially paid to MFM a 50% survivorship pension pursuant to 40 ILCS 5/3-112(c).<sup>1</sup> Plaintiff later filed a request for an increased pension, arguing that he qualified for a "line of duty" award under 5/3-112(e). The Village moved to dismiss the request, and the Pension Board granted its motion in part after argument on February 1, 2018, finding that, regardless of whether Officer Masterton died in "performance of an act of duty," surviving children are not eligible for such benefits under 112(e). Plaintiff then filed this action seeking to reverse that finding.

**Legal Standard**

The Administrative Review Law provides that judicial review of an administrative agency decision shall extend to all questions of law and fact presented by the record before the court. 735 ILCS 5/3-110. An administrative agency's findings of fact are presumed true, a reviewing court is limited to ascertaining whether such findings of fact are against the manifest weight of the

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<sup>1</sup> While the parties disagree on how to characterize this payment (apparently "without prejudice" to future hearings and on a provisional basis), those facts are not materially in dispute, as discussed further below.

evidence. *Gruwell v. Ill. Dep't of Fin. & Prof'l Regulation*, 406 Ill. App. 3d 283, 285 (4th Dist. 2010). A decision on a mixed question of law and fact is clearly erroneous when the reviewing court is left with the definite and firm conviction that a mistake has been committed. *Exelon Corp. v. Dept. of Revenue*, 234 Ill. 2d 266, 273 (2009).

### Discussion

The primary question before the court<sup>2</sup> is whether the Pension Board's interpretation of Section 3-112 of the Illinois Pension Code (specifically that 112(e) only applies to surviving spouses and not other survivors) is correct. This is a pure question of law (and apparently one of first impression) with no relevant facts in dispute,<sup>3</sup> and the court accordingly reviews it *de novo*. As all parties agree, "[t]he cardinal rule of statutory construction, to which all other canons and rules are subordinate, is to ascertain and give effect to the intent of the legislature." *Wade v. City of North Chicago Police Pension Board*, 226 Ill. 2d 485, 509 (2007). The language of the statute itself best informs this inquiry. *Id* at 510.

Turning to that language,<sup>4</sup> Section 3-112 is entitled "Pension to survivors" and appears to lay out a comprehensive scheme for awarding pension benefits to the survivors of late Police Officers. 112(a) provides the priority of such benefits: first to a spouse (if any), then to dependent children (if no spouse), then to dependent parents (if no spouse or children). Subsections (b) and (c) lay out the *amount* of the benefits based on years of service, and subsection (e) provides for the special circumstance in which an officer dies in a way related to his duties (commonly referred to as the "line of duty").

The key dispute in this matter turns on the phrasing of 112(e), which refers to "[t]he pension of the surviving spouse of a police officer" who dies in the line of duty. Defendants argue (and the Pension Board found below) that this language excludes all survivors but the "surviving spouse," and that MFM (as a child) is therefore ineligible. Defendants primarily rely on case law that

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<sup>2</sup> The Village also argues in response that the Pension Board erroneously found that its earlier grant of pension benefits was not a "final decision," and that it therefore had jurisdiction to hear the request for an increased pension. Based on the facts in the record (specifically referencing the "without prejudice" nature of the grant), the court cannot find its conclusion thereon clearly erroneous.

<sup>3</sup> The Pension Board made no finding on whether Officer Masterton in fact died in "performance of an act of duty," only dismissing the request based on its interpretation of the law.

<sup>4</sup> The statute's relevant sections are laid out in full both in the record below and in the parties' briefs. The court need not reiterate them fully in this Order, and will instead reference key portions as appropriate.

the term “surviving spouse” has a clear meaning<sup>5</sup> and that the legislature’s inclusion of it in 112(e) implies that it intended to exclude all others.

The court is persuaded that this interpretation is incorrect. While not unreasonable when viewing 112(e) alone, the statute as a whole paints a stronger picture of the legislature’s intent to include all survivors in all of its provisions. In addition to multiple general references to “survivors” (in the title of the statute as well as in subsections (b) and (c)), 112(e) itself discusses “[t]he pension of the surviving spouse” (emphasis added), suggesting that it refers to the same pension scheme as the rest of the statute. When combined with the rest of 112(e), as well as (b) and (c), this interpretation leads to a consistent and reasonable result: normally (under (b) and (c)), the survivor’s pension<sup>6</sup> is 50% with 10-20 years of service, and 100% with >20 years of service. However (under (e)), an officer who dies in the line of duty earns a 100% pension regardless of years of service.<sup>7</sup> 112(e) is thus best read as an exception to the general rules in the prior subsections (“notwithstanding any provision in this Article to the contrary”) rather than as a wholly separate type of pension award as Defendants argue.

Adding further support to this interpretation is subsection (a)’s second paragraph (added via amendment in 2010), which states that “[n]othing in this subsection (a) shall act to diminish *the survivor’s benefits described in subsection (e) of this Section.*” (emphasis added). No party cites this paragraph (perhaps because it applies to new officers beginning in 2011 and therefore clearly not Officer Masterton), but it further shows the legislature’s understanding that “the pension” described in 112(e) is the same type of pension described in the other subsections, applicable to all eligible survivors (notwithstanding its use therein of the “surviving spouse” language).

Finally, as Plaintiff emphasizes, the Board’s interpretation of Section 112 appears to lead to manifestly unjust results. As it found, an officer such as Masterton who died (arguably) in the line of duty, with almost 20 years of service and children but with no spouse, would be entitled to only a 50% survivor’s

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<sup>5</sup> See *In re Marriage of Hannon*, 207 Ill. App. 3d 329 (1991).

<sup>6</sup> Defendants do not dispute that 112(b) and 112(c) apply to all eligible survivors, including MFM.

<sup>7</sup> Importantly, subsection (c) specifically reiterates this rule, stating that “[i]f death occurs as a result of the performance of duty, the 10 year requirement shall not apply and the pension to survivors shall be payable after any period of service.” (emphasis added)

pension, while an officer otherwise similar but with *less* than 10 years of service would receive a 100% pension.<sup>8</sup> Similarly, an officer whose spouse predeceases him would see any children receive only half of the benefits an officer with a surviving spouse would otherwise receive. The court presumes the legislature did not intend these results. See *JP Morgan Chase Bank v. Earth Foods*, 238 Ill. 2d 455 (2010).

In sum, the court finds Defendants' arguments (and the Pension Board's ruling below) focus too narrowly on the single phrase "surviving spouse" in 112(e). When considering the statute as a whole, it becomes apparent that the legislature, despite perhaps imprecise drafting at times, intended to craft a single, comprehensive scheme for the payment of surviving pension benefits, all of which (including (e)'s "line of duty" benefits) are payable to survivors in the order of priority described in subsection (a). The Pension Board's ruling to the contrary misinterpreted the law, and Plaintiff's Petition for Administrative Review is therefore well-grounded.

WHEREFORE, Plaintiff's Petition for Administrative Review is hereby GRANTED in that the Defendant Glenview Police Pension Board's February 1, 2018 Decision and Order is hereby reversed as to its findings interpreting the applicability of 40 ILCS 5/3-112. This matter is hereby remanded for further proceedings consistent with the rulings herein. This is a final and appealable Order.

ENTITLED DAVID B. ATKINS  
MAR 22 2019  
Circuit Court-1879  
Judge David B. Atkins

The court.

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<sup>8</sup> Defendants do not dispute that, in their position, children of officers otherwise not entitled to *any* survivorship pension (due to insufficient years of service) are nevertheless entitled to the 112(e) benefit if the officer dies in the line of duty.

CASE NO. \_\_\_\_\_

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**IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT**

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<b>KELLY A. MASTERTON,</b>	)	
<b>GUARDIAN OF THE ESTATE OF</b>	)	
<b>M.F. MASTERTON,</b>	)	
	)	<b>Appeal from the Circuit Court of Cook</b>
<b>Plaintiff-Respondent,</b>	)	<b>County, County Department, Chancery</b>
	)	<b>Division</b>
<b>v.</b>	)	
	)	<b>Case No.: 2018-CH—03503</b>
<b>VILLAGE OF GLENVIEW</b>	)	
<b>POLICE PENSION BOARD, and</b>	)	<b>Honorable Judge David B. Atkins</b>
<b>VILLAGE OF GLENVIEW</b>	)	<b>Judge Presiding</b>
	)	
<b>Defendant-Petitioners.</b>	)	

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**NOTICE OF FILING**

TO:

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PLEASE TAKE NOTICE that on the 19<sup>th</sup> of April, 2019, Defendants **VILLAGE OF GLENVIEW** filed the with the Clerk of the First District Appellate Court, **SUPPORTING RECORD** a true and correct copy of which is herewith served upon you.

Respectfully submitted,

**VILLAGE OF GLENVIEW**

By: /s/ Paul A. Denham

One Of Their Attorneys

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**Firm I.D. # 47491**  
**Date: April 19, 2019**

**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that caused a true and correct copy of the foregoing **NOTICE OF FILING AND SUPPORTING RECORD** to be served upon the following counsel of record by electronically filing via File & Serve Illinois and electronic mail on this 19<sup>th</sup> day of April, 2019:

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By: /s/ Paul A. Denham  
Paul A. Denham